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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91214449
Party	Defendant Alpha Omega Epsilon, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OMEGA, S.A. (OMEGA AG)
(OMEGA LTD.),

OPPOSER,

V.

ALPHA OMEGA EPSILON, INC.

APPLICANT.

Opposition Nos. 91214449 (Parent)
91214452
91214453
91214454

Serial Nos. 85/855823
85/857062
85/857065
85/855839

**ALPHA OMEGA EPSILON’S OPPOSITION TO
OPPOSER’S RULE 56(D) MOTION FOR DISCOVERY**

Opposer Omega, S.A. is perhaps best known as a manufacturer of watches and other time-keeping devices. Its primary consumer products are premium-priced high-end wrist watches selling for thousands of dollars each. *See* Applicant’s Exhibit 1. Although various models of Omega Watches can be acquired for “only” a few thousand dollars, many models sell for tens of thousands of dollars. *Id.* at Misc010–016.

A. The Omega Watch Parallel Oppositions to Registration of the Insignia of the Alpha Omega Epsilon Engineering Sorority and the Alpha Phi Omega National Service Fraternity.

Applicant, Alpha Omega Epsilon, a non-profit organization also known as AΩE, is a collegiate Greek letter sorority founded in 1984 for students in engineering. Also pending before the Board is Opposer’s parallel proceeding against the Alpha Phi Omega National Service Fraternity, also known as AΦΩ, namely consolidated Opposition No. 91197504 (Parent). Alpha Phi Omega, also a collegiate non-profit organization was founded in 1925. Omega’s Opposition against Alpha Phi Omega has been pending nearly four years, since November, 2010.

In Omega’s Oppositions to the applications to register the Alpha Omega Epsilon insignia as well as Oppositions in the parallel case to the applications to register the Alpha Phi Omega

insignia, the 2(d) issue whether a consumer of fraternity or sorority affinity merchandise, primarily college students, will confuse fraternal affinity merchandise with Omega and its premium-priced high-end watches, or will at least associate the merchandise with Opposer or its \$2,000, \$5,000, \$10,000, \$20,000 or \$40,000 Omega watches.

B. Co-pending Motions for Summary Judgment and Co-pending Motions Consolidation for the Limited Purpose of Pursuing Uniform Adjudication of Identical Issue.

Co-pending Motions for Summary Judgment have been filed for dismissal of Omega's Oppositions against Alpha Omega Epsilon and Alpha Phi Omega. Both motions are based on the identical case dispositive point. The focal point of both co-pending Motions for Summary Judgment is this: "*the truly dispositive factor here* is the dissimilarity of the marks; the marks simply are not similar enough to support any plausible claim of likelihood of confusion." See e.g. D.E. 7 at p.14. Because Alpha Omega Epsilon and Alpha Phi Omega's Motion for Summary Judgment are both grounded on this point, we have filed motions for limited consolidation of both proceedings in pursuit of a single uniform Board adjudication of this identical focal point.

The case dispositive fatal flaw of the parallel Oppositions is the reality that the public is conditioned to identify a combination of two or three Greek alphabet letters in a name as a reference to a fraternity or sorority. *Abraham v. Alpha Chi Omega*, 781 F.Supp.2d 396, 410 (N.D.Tx. 2011) *aff'd* 708 F.3d 614 (5th Cir. 2013) *cert. denied*, 134 S.Ct. 88 (2013) ("use of various combinations of Greek letters, in the mind of the public, generally refers to fraternities and sororities"). Indeed, the Board itself recently noted the same holding that the Latin alphabet letters EK on caps is not likely to be confused with the Greek alphabet letters for Sigma Kappa Sorority, namely, ΣK, also on caps, because Greek insignia will be "perceived as identifying both Greek letters and the name of a sorority." *In re New Era Cap Co., Inc.*, No. 85515684, <http://ttabvue.uspto.gov/ttabvue/v?pno=85515684&pty=EXA&eno=21> at p.5 (TTAB July 7,

2014). To reverse a registration refusal based upon a finding of likely confusion, the Board in the Sigma Kappa case thus found that confusion in such a context is not likely, *as a matter of law*.

Indeed, the Board in the Sigma Kappa Case went much further holding that dissimilarity of this sort alone is more than enough to be dispositive as a matter of law, there is no need to even address any other *du Pont* factors, “the dissimilarity of the marks and differences in sound, meaning, and commercial impression are so great that they outweigh the other *du Pont* factors.... For that reason, we find the first *du Pont* factor to be dispositive.” *Id.* at 5-6. “[A] single *du Pont* factor may be dispositive.” *Id.* at 4 (citing *Kellogg Co. v. Pack’em Enters, Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991). Indeed, Opposer, through its parent company, Swatch AG is well acquainted with this rule of law. *Swatch AG v. M. Z. Berger & Co., Inc.* 108 USPQ2d 1463 (TTAB 2013) (IWATCH for assorted watches and timekeeping devices not likely to be confused with well-known SWATCH brand). As noted by the Board therein,

[T]he sound, meaning, appearance, and overall commercial impression of the marks SWATCH and IWATCH are sufficiently dissimilar to render confusion unlikely.

Thus, despite the *du Pont* factors that favor opposer, in this case, a single *du Pont* factor may be dispositive.

Id. (citing *Kellogg*, 21 USPQ2d at 1145 and *Citigroup Inc v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011)).

So too here, in the parallel cases for which limited consolidation is sought, the case dispositive point is whether the marks are so similar that a consumer of fraternity or sorority affinity merchandise, primarily college students, will confuse Alpha Omega Epsilon or Alpha Phi Omega affinity merchandise with Omega and its premium-priced high-end watches, or will at least associate the merchandise with Opposer or its \$2,000, \$5,000, \$10,000, \$20,000 or \$40,000 Omega watches. As noted by the Board in the *New Era Cap Co.* case, this issue is

resolvable as a matter of law; a combination of Greek alphabet letters in the fraternal insignia, ΑΩΕ or ΑΦΩ, will be “perceived as identifying both Greek letters and the name of a sorority.” *In re New Era Cap Co., Inc.*, at p.5. *See also Abraham*, 781 F.Supp.2d at 410 (“use of various combinations of Greek letters, in the mind of the public, generally refers to fraternities and sororities”).

Because the case dispositive point is resolvable as a matter of law, there is no need for Omega Watch to delay these proceedings any further, and to unnecessarily force Applicant, a non-profit organization, to incur the expense of appearing at non-essential depositions in Indianapolis, Indiana, Memphis, Tennessee, and San Diego, California. Nor is it appropriate to consider what is in essence Opposer Motion to Compel non-essential written discovery answers relating to interrogatory responses which have never even been subject to a “meet and confer.” The portion of Opposer’s Motion for Discovery relating to previously objected to interrogatories is just that, a procedurally defective Motion to Compel Discovery which has never been the subject of a “meet and confer.” Regardless, even that portion of the Motion for Discovery goes to nothing “essential” to responding to the Motion for Summary Judgment.

C. Opposer Seeks Merely to “Go Fishing”; It has not Provided the Requisite Declaration to Delay Consideration of the Motion for Summary Judgment and to Allow Further Discovery.

Opposer does not even provide the requisite affidavit or declaration asserting what it expects to discover if it is allowed further discovery. It does not suffice for Opposer to merely state generally “that it needs discovery in order to respond to the motion for summary judgment; rather, the party must state therein the *reasons why it is unable, without discovery*. . . to show the existence of a genuine issue of material fact.” TBMP § 528.06 (emphasis added). Nowhere in the Declaration is any attempt even made to explain what information essential to opposing the Motion for Summary Judgment is unavailable to Opposer. Rather, the essence of the inadequate

Declaration is merely that Opposer wants to go fishing “to know if there are genuine issues of material fact with respect to Applicant’s statements about its products.” *See* Gelber Decl. at ¶ 29.

Mere speculation that a fishing expedition might generate something is not adequate support for delaying consideration of a Motion for Summary Judgment. It is improper to delay consideration of a Motion for Summary Judgment on the mere hope “that issues of material fact *may be developed*.” *Nature’s Way Products Inc. v. Nature’s Herbs Inc.*, 9 USPQ2d 2077, 2081 (TTAB 1988) (“summary judgment need not be denied merely to satisfy a litigant’s speculative hope that it might find some evidence tending to support its case”) (emphasis added); *see also CashFlow Techs., Inc. v. NetDecide*, 2002 TTAB LEXIS 428, at *9 (TTAB. Feb. 7, 2002) (“A party cannot engage in a ‘fishing expedition’ in hopes of gathering some evidence to help its case”).

“A party’s hope or hunch that discovery might fortuitously create an issue of fact for trial is simply not enough.” T. Jeffrey Quinn, *TIPS FROM THE TTAB Discovery Safeguards in Motions for Summary Judgment: No Fishing Allowed*, 80 Trademark Rep. 413, 417 (1990). A copy of Judge Quinn’s Article is submitted herewith marked as Applicant’s Exhibit 2. “Rather, the non-movant must point to specific facts that the discovery will produce.” *Id.*

D. The “Fishing Expedition” Opposer Wishes to Conduct Through Additional Discovery Goes to Immaterial Issues and Does Not Relate to Information “Unavailable” to Opposer.

Opposer wishes to delay consideration of the Motion for Summary Judgment to allow it to take unnecessary depositions of officials of the Alpha Tau Omega Fraternity and the Alpha Chi Omega Sorority in Indianapolis, an unnecessary deposition of an official of the Chi Omega Sorority in Memphis, and an unnecessary deposition in San Diego of Dan Shaver, of Affinity Marketing Consultants, a business specializing in the licensing of fraternity and sorority affinity merchandise.

Each of the persons Omega wishes to depose have provided Declarations in this Opposition also filed in the parallel Opposition involving the Alpha Phi Omega Fraternity. Copies of those Declarations are submitted herewith, namely the Declarations of Janine Wampler (Alpha Chi Omega), Wynn Smiley (Alpha Tau Omega), Carol Miraglia (Chi Omega) and Dan Shaver. *See* Applicant's Exhibits 3 – 6. The primary gist of the Declarations is readily available information that the Board could easily take judicial notice of: fraternities and sororities obtain the production of a wide assortment of items such as clothing, jewelry, stationery, banners, flags, decals and so forth bearing the insignia of a fraternity or sorority for members to acquire and wear or display to reflect membership in their respective fraternity or sorority. With the Declarations, the Declarants also appended sample marketing materials and identified various of the licensed vendors who market fraternity and sorority merchandise including vendors such as sassysorority.com, kollegetown.com, A Greek Concept, American Greek Co., getsomegreek.com, gonegreek.com, greekandunique.net, greekcreations.com, greekgallery.net, greekt-shirts that rock.com, greekyearbook.com, greekgear.com, greek101.com, greekwithenvy.com, greekstreak.com, greekspirit.org, and greekshirtstore.com.

Even though the case dispositive focal point of the Motion for Summary Judgment is the dissimilarity of the marks, a question of law, Omega speculates that it a fishing expedition relating to the Greek products market might find something useful to use in opposition to the motion. Omega pleads for the right to go fishing to investigate the channels of trade for Greek affinity merchandise, to investigate whether the target market for Greek merchandise is members of the fraternities and sororities whose insignia is reproduced on the products, to investigate the nature of uses by Alpha Chi Omega, Alpha Tau Omega, and Chi Omega of their insignia on merchandise, the dates of all such uses, and sophistication of customers.

This prayed for fishing expedition does not at all go to the focal point of the Motion for Summary Judgment, the question of law whether the marks are too dissimilar. Rather, the prayed for fishing expedition goes not only to indisputable factual background, it relates to information which has been provided to Opposer as well as information which is readily available in a simple Google or Bing search of “fraternity merchandise,” “sorority merchandise,” “Alpha Chi Omega merchandise,” “Alpha Tau Omega merchandise,” or “Chi Omega merchandise.” Any such simple search would direct the searcher to a wide assortment of Greek products specialty vendors as well as confirm what anyone who attended college is well aware: fraternities and sororities make available a wide assortment of items bearing their insignia such as clothing, jewelry, stationery, banners, flags, decals and so forth bearing the insignia Greek alphabet insignia for members to acquire and wear or display to reflect membership in their respective fraternity or sorority. Indeed, any such simple Internet search would direct the searcher to various of the Greek specialty products vendors already identified to opposer in the Shaver Declaration such as A Greek Concept, American Greek Co., getsomegreek.com, gonegreek.com, greekandunique.net, greekcreations.com, greekgallery.net, greekt-shirtssthatrock.com, greekyearbook.com, greekgear.com, greek101.com, greekwithenvy.com, greekstreak.com, greekspirit.org, and greekshirtstore.com.

The simple background information provided in the Alpha Chi Omega, Alpha Tau Omega, Chi Omega, and Dan Shaver Declarations is so readily available to Opposer, there is no need to delay consideration of the pending Motion for Summary Judgment, nor to allow Opposer to force Applicant, a non-profit organization, to jet it counsel to Memphis and San Diego, as well as travel to Indianapolis for depositions relating to information which is neither unavailable to Opposer, nor even essential to consideration of the Motion for Summary Judgment.

Indeed, not only is does the prayed for discovery relate to information readily available to Opposer, it relates to information we have provided to Opposer as long ago as four years ago. Even prior to the institution of the Oppositions here in issue, at the very outset of the Oppositions in the parallel Alpha Phi Omega proceeding for which consolidation has been requested, nearly four years ago, in a December 27, 2010 cover letter to Omega's counsel provided with our Answers, we pointed out to them –

We assume you understand that there are numerous Greek letter collegiate fraternal organizations, and that each one typically uses a combination of two to three Greek alphabet letters as its name. Many of these utilize the Greek alphabet letter “Omega” in their name. Perhaps you were unaware that there is a well-established niche market through which Greek letter collegiate fraternal organizations make available for purchase by their members various affinity products, including clothing, badges, jewelry and so forth containing their Greek names and letters, including various of those organizations that use the Greek alphabet letter “Omega” in their name.

Our brief research reveals an extensive amount of third-party use of the Greek letter “Omega” by Greek organizations. For example, the website of just one Greek jewelry vendor, <http://www.hjgreek.com/index.cfm?event=Products.showOrganizations>, displays jewelry for six Greek organizations which include the word “Omega,” namely, Alpha Chi Omega, Alpha Omega Epsilon, Alpha Phi Omega, Alpha Tau Omega, Chi Omega and Omega Tau Sigma. ***Printouts for each of these organizations prominently displaying clothing and jewelry with the word “Omega” are enclosed for your review.*** It is worth noting that at least two of these, Alpha Chi Omega and Alpha Tau Omega, founded respectively in 1885 and 1865, predate your client. Further, a simple online Google search reveals an additional *four* Greek organizations which include the word “Omega,” namely, Omega Psi Phi, Alpha Omega Theta, Alpha Nu Omega and Gamma Phi Omega. Enclosures demonstrating advertisement of clothing and jewelry bearing these organizations’ names are also attached for your review. Given the widespread use within the Greek community of the Greek letter “Omega” in connection with clothing and jewelry, we hope you will agree that the pending oppositions are not good candidates for successful dilution claims.

See Applicant's Exhibit 7 (emphasis added). With this correspondence, we included many of the documents showing third party uses of fraternity and sorority names and insignia containing the letter "Omega" within the insignia. Further, the Internet website link provided to Omega's counsel in that letter, [http://www.hjgreek.com/index.cfm?event= Products.showOrganizations](http://www.hjgreek.com/index.cfm?event=Products.showOrganizations), is the website from which numerous of the pages are found which were included with the Declarations Omega postures now mandates the need for further discovery.

Not only was all of this information brought to the attention of Omega's counsel in 2010 (Applicant's Exhibit 7), it was again brought to their attention in a letter dated May 5, 2011 –

Alpha Phi Omega has been in existence for over 85 years, since 1925. Jewelry bearing the Alpha Phi Omega name or Greek Alphabet letters has been produced for that entire time period. For however long Omega SA has been doing business in the United States markets, the parties have coexisted without any instances of confusion known to us. Are you aware of any? We expect there has been none. Considering that Alpha Phi Omega is a collegiate fraternal organization, just like numerous other collegiate Greek letter fraternities and sororities who utilize the Greek Alphabet letter "Omega" in their name, we would be quite surprised if anyone ever confuses Omega SA's commercial endeavors and products with fraternities and sororities or their Greek affinity merchandise.

This firm and Alpha Phi Omega's merchandising company also represent the *Alpha Tau Omega Fraternity, founded in 1865, and the Alpha Chi Omega Sorority, founded in 1885. Jewelry bearing both of these organizations names or Greek Alphabet letters has been produced for them ever since their founding dates, dates which predate any first use of the Omega SA marks anywhere, much less here in the States.*

This firm and Alpha Phi Omega's merchandising company also represent the *Chi Omega Sorority, founded in the spring of 1895 apparently about simultaneous with the first use of the Omega SA marks. Chi Omega is the largest collegiate sorority and like all fraternities and sororities, jewelry bearing it name or Greek Alphabet letters has been produced for it since its founding. See Trademark Registration No. 1,361,759.*

See Applicant's Exhibit 8 (emphasis added).

Then again, in our Initial Disclosures in the Alpha Phi Omega proceeding, as well as in this proceeding, we identified the documentary evidence for which Omega now, years later, requests additional discovery. We identified,

Categories of documents and tangible things within the possession, custody or control of Applicant, which it may use to support its claims and defenses in this action:

2. Examples of widespread use of the Omega word and symbol, Ω, on fraternity and sorority jewelry and other merchandise.

Now years later, and not until *following the filing* of the co-pending Motion for Summary Judgment in the Alpha Phi Omega proceeding, Omega asserts it needs additional discovery relating to these third-party uses. The simple fact of the matter remains, various fraternities and sororities with the Greek alphabet letter “Omega” in their name reproduce their fraternity or sorority name or letters on a wide assortment of items such as clothing, jewelry, stationery, banners, flags, decals and so forth for members to acquire and wear or display to reflect membership in their respective fraternity. If Omega truly needs more of information of third-party use than it has already been provided, the information is readily available through simple Internet searches. A fishing expedition in that direction is unnecessary; it is an improper basis to delay this proceeding further.

[A]pplicant’s attempt to present evidence of third-party use... should not have come as a surprise because it is common practice to introduce third-party use to demonstrate that a mark is weak and, therefore, entitled to only a narrow scope of protection. The documents... were equally accessible to opposer, i.e., they were publicly available via the internet.

Mfrs. Tech. Insts., Inc. v. Pinnacle College, LLC, 2013 TTAB LEXIS 478, 6-7 (TTAB Sept. 4, 2013) quoting *Rocket Trademark Pty Ltd. V. Phard S.p.A.*, 98 USPQ2d 1066, 1071-72 (TTAB 2011).

Indeed, the use of the Greek alphabet letter “Omega” in fraternity and sorority names is so common, Opposer even acknowledges it is aware of the existence of numerous fraternities and sororities with Omega in their names including, Alpha Chi **Omega**, Alpha **Omega** Epsilon, Alpha Phi **Omega**, Alpha Tau **Omega**, Chi **Omega**, Delta Phi **Omega**, Gamma Phi **Omega**, Lambda Tau **Omega**, **Omega** Psi Phi, **Omega** Delta Phi, **Omega** Phi Beta, **Omega** Phi Chi, and Sigma **Omega** Phi. *See* Applicant’s Exhibit 9 (Excerpts of Opposer’s response to Alpha Omega Epsilon Interrogatories) response to Interrogatory No. 12. The additional discovery sought by Opposer relates to information it already has, or at least information which is readily available to it.

Omega also asserts that it needs to depose to Executive Director of Alpha Tau Omega to cross examine him on how it is he knows that the fraternity has utilized its ATΩ letters on member badges since 1865, needs to depose the Alpha Chi Omega official to cross examine her on how it is she knows that the sorority has utilized its AXΩ letters on member badges since 1885, and needs to depose the Chi Omega official to cross examine her on how it is she knows that the sorority has utilized its XΩ letters on member badges since 1895. The simple testimony of these records custodians would no doubt be that this is what the historical records of the fraternity or sorority reflect. Regardless, the exact date of their founding dates and first uses of member badges bearing their insignia is not at all essential to consideration of the pending Motion for Summary Judgment. It would be a waste of time and money to jet counsel around the country for depositions to obtain this testimony.

The pertinent—and undisputable—background fact is there are numerous Greek letter fraternities and sororities with the Greek letter “Omega” in their name, and fraternities and sororities typically make available a wide assortment of items such as clothing, jewelry,

stationery, banners, flags, decals and so forth for members to wear or display to reflect membership in their respective fraternity. Omega does not need further discovery to confirm what is already provided, or is readily available to it.

E. Additional Discovery is Unnecessary When the Focal Point of a Motion for Summary Judgment is Dissimilarity of Marks

The truly dispositive factor common to both of the co-pending Motions for Summary Judgment is the dissimilarity of the marks; the marks simply are not similar enough to support any plausible claim of likelihood of confusion.

Here, this is a question of law. As both courts and the Board recognize, the public is conditioned to identify a combination of two or three Greek alphabet letters in a name as a reference to a fraternity or sorority. *Abraham v. Alpha Chi Omega*, 781 F.Supp.2d 396, 410 (N.D.Tx. 2011) *aff'd* 708 F.3d 614 (5th Cir. 2013) *cert. denied*, 134 S.Ct. 88 (2013) (“use of various combinations of Greek letters, in the mind of the public, generally refers to fraternities and sororities”). Indeed, the Board itself recently noted the same holding that the Latin alphabet letters EK on caps is not likely to be confused with the Greek alphabet letters for Sigma Kappa Sorority, namely, ΣK, also on caps, because Greek insignia will be “perceived as identifying both Greek letters and the name of a sorority.” *In re New Era Cap Co., Inc.*, No. 85515684, <http://ttabvue.uspto.gov/ttabvue/v?pno=85515684&pty=EXA&eno=21> at p.5 (TTAB July 7, 2014). To reverse a registration refusal based upon a finding of likely confusion, the Board in the Sigma Kappa case thus found, *as a matter of law*, that confusion in such a context is not likely.

Indeed, the Board in the Sigma Kappa Case went much further, holding that dissimilarity of this sort alone is more than enough to be dispositive as a matter of law, there is no need to even address any other *duPont* factors, “the dissimilarity of the marks and differences in sound, meaning, and commercial impression are so great that they outweigh the other *du Pont* factors....

For that reason, we find the first *du Pont* factor to be dispositive.” *Id.* at 5-6. “[A] single *du Pont* factor may be dispositive.” *Id.* at 4 (citing *Kellogg Co. v. Pack’em Enters, Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991)). Indeed, Opposer, through its parent company, Swatch AG is well acquainted with this rule of law. *Swatch AG v. M. Z. Berger & Co., Inc.* 108 USPQ2d 1463 (TTAB 2013) (IWATCH for assorted watches and timekeeping devices not likely to be confused with well-known SWATCH brand). As noted by the Board therein,

[T]he sound, meaning, appearance, and overall commercial impression of the marks SWATCH and IWATCH are sufficiently dissimilar to render confusion unlikely.

Thus, despite the *du Pont* factors that favor opposer, in this case, a single *du Pont* factor may be dispositive.

Id. (citing *Kellogg*, 21 USPQ2d at 1145 and *Citigroup Inc v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011)).

When dissimilarity of marks alone is the case dispositive issue, there is no need to delay consideration of a pending Motion for Summary Judgment to allow further discovery relating to any underlying, non-dispositive *DuPont* factors. *See Cytosport, Inc. v. Comercializadora de Lacteos y Derivados, S.A. de C.V.*, 2011 TTAB LEXIS 325, at *14-15 (TTAB. Sept. 26, 2011) (“further discovery is unnecessary” relating to other *DuPont* factors when “the dissimilarities of marks are so great as to avoid likelihood of confusion”) and *Build-A-Bear Workshop v. Silver dollar City, Inc.*, 2003 TTAB LEXIS 567, at *7 (TTAB. Dec. 1, 2003) (“obvious dissimilarity of the marks”; no need for “Rule 56(f) continuance merely on some vague hope plaintiff will turn up something that is relevant”).

Here also, dissimilarity of marks, a question of law, is the dispositive factor, there is no need to allow additional discovery relating to ancillary background information, especially considering the requested information has been made available to Opposer, is readily subject to

confirmation through simple Internet Google or Bing searches of “fraternity merchandise,” “sorority merchandise,” “Alpha Chi Omega merchandise,” “Alpha Tau Omega merchandise,” “Chi Omega merchandise.” Any such simple search would direct anyone to a wide assortment of Greek products specialty vendors as well as confirm what anyone who attended college is well aware, fraternities and sororities make available a wide assortment of items bearing their insignia such as clothing, jewelry, stationery, banners, flags, decals and so forth bearing the insignia of the respective fraternity for members to wear or display to reflect membership in their respective fraternity. Indeed, any such simple Internet search would direct the searcher to various of the Greek specialty products vendors identified in the Shaver Declaration such as A Greek Concept, American Greek Co., getsomegreek.com, gonegreek.com, greekandunique.net, greekcreations.com, greekgallery.net, greekt-shirtsthatrock.com, greekyearbook.com, greekgear.com, greek101.com, greekwithenvy.com, greekstreak.com, greekspirit.org, and greekshirtstore.com.

All protestations aside, the requested information is not unavailable to Opposer and is basically merely cumulative of what has been provided. Regardless, none of the requested discovery is essential to opposing the motion for summary judgment, it has no bearing on the case dispositive issue.

F. The Portion of the Motion for Discovery Relating to Objections to Omega’s Interrogatories is Merely a Disguised Improper Motion to Compel.

Included in Omega’s Interrogatories was a request to “Identify and describe each Product Applicant sells under Applicant’s Marks.” *See* Exhibit 1 to Motion for Discovery at Interrogatory No. 2. Interrogatory No. 3 requested additional information as to “each Product” identified in response to Interrogatory No. 2.

Applicant has dozens of licensees producing product bearing its insignia. Most of the dozens of licensees produce numerous distinct products bearing the insignia. The identification alone of “each Product Applicant sells under Applicant’s Marks” would be a listing of many scores, if not hundreds of products, and to research and provide the additional information requested in interrogatory No. 3 likewise would constitute many scores, if not hundreds of distinct answers. To research and provide the requested information thus would massively exceed the Board’s limitation on Interrogatories. Thus, pursuant to TBMP § 405.03(e), we objected generally to the Interrogatories. *See* Exhibit 3 to Motion for Discovery.

One must wonder how important the requested information really is to Opposer. Although we objected generally to the Interrogatories, and answered none as prescribed by rule 405.03(e), Opposer apparently never noticed that we had not answered the Interrogatories. They certainly never complained to us, nor even requested a meet and confer. Indeed, not until the filing of the Motion for Discovery did Opposer ever mention any concern about our Rule 405.03 objection to the Interrogatories.

To now complain, without first conducting the requisite “meet and confer” is improper. Accordingly, so much of the Motion for Discovery as goes to our objections to the Interrogatories is not ripe for consideration by the Board.

CONCLUSION

The case dispositive point of the pending Motion for Summary Judgment is the dissimilarity of the marks; the marks simply are not similar enough to support any plausible claim of likelihood of confusion.

Here, this is a question of law. As both the courts and the Board recognize, the public is conditioned to identify a combination of two or three Greek alphabet letters in a name as a reference to a fraternity or sorority. *Abraham v. Alpha Chi Omega*, 781 F.Supp.2d 396, 410

(N.D.Tx. 2011) *aff'd* 708 F.3d 614 (5th Cir. 2013) *cert. denied*, 134 S.Ct. 88 (2013) (“use of various combinations of Greek letters, in the mind of the public, generally refers to fraternities and sororities”). Indeed, the Board itself recently noted the same holding that the Latin alphabet letters EK on caps is not likely to be confused with the Greek alphabet letters for Sigma Kappa Sorority, namely, ΣK, also on caps, because Greek insignia will be “perceived as identifying both Greek letters and the name of a sorority.” *In re New Era Cap Co., Inc.*, No. 85515684, <http://ttabvue.uspto.gov/ttabvue/v?pno=85515684&pty=EXA&eno=21> at p.5 (TTAB July 7, 2014). To reverse a registration refusal based upon a finding of likely confusion, the Board in the Sigma Kappa case thus found, *as a matter of law*, that confusion in such a context is not likely.

When dissimilarity of marks alone is the case dispositive issue, there is no need to delay consideration of a pending Motion for Summary Judgment to allow further discovery relating to any underlying, non-dispositive *DuPont* factors. *See Cytosport, Inc. v. Comercializadora de Lacteos y Derivados, S.A. de C.V.*, 2011 TTAB LEXIS 325, at *14-15 (TTAB. Sept. 26, 2011) (“further discovery is unnecessary” relating to other *du Pont* factors when “the dissimilarities of marks are so great as to avoid likelihood of confusion”) and *Build-A-Bear Workshop v. Silver dollar City, Inc.*, 2003 TTAB LEXIS 567, at *7 (TTAB. Dec. 1, 2003) (“obvious dissimilarity of the marks”; no need for “Rule 56(f) continuance merely on some vague hope plaintiff will turn up something that is relevant”).

Because the case dispositive point is resolvable as a matter of law, there is no need for Omega Watch to delay these proceedings any further, and to unnecessarily force Applicant, a non-profit organization, to incur the expense of appearing at non-essential depositions in Indianapolis, Indiana, Memphis, Tennessee, and San Diego, California. Nor is it appropriate to consider what is in essence Opposer Motion to Compel non-essential written discovery answers

relating to interrogatory responses which have never even been subject to a “meet and confer.”

The portion of Opposer’s Motion for Discovery relating to previously objected to interrogatories is just that, a procedurally defective Motion to Compel Discovery which has never been the subject of a “meet and confer.” Regardless, even that portion of the Motion for Discovery goes to nothing “essential” to responding to the Motion for Summary Judgment.

“A party’s hope or hunch that discovery might fortuitously create an issue of fact for trial is simply not enough.” T. Jeffrey Quinn, *TIPS FROM THE TTAB Discovery Safeguards in Motions for Summary Judgment: No Fishing Allowed*, 80 Trademark Rep. 413, 417 (1990). See Applicant’s Exhibit 2. “Rather, the non-movant must point to specific facts that the discovery will produce.” *Id.*

Opposer does not even provide the requisite affidavit or declaration asserting what it expects to discover if it is allowed further discovery. It does not suffice for Opposer to merely state generally “that it needs discovery in order to respond to the motion for summary judgment; rather, the party must state therein the *reasons why it is unable, without discovery*. . . to show the existence of a genuine issue of material fact.” TBMP § 528.06 (emphasis added). Nowhere in the Declaration is any attempt even made to explain what information essential to opposing the Motion for Summary Judgment is unavailable to Opposer. Rather, the essence of the inadequate Declaration is merely that Opposer wants to go fishing “to know if there are genuine issues of material fact with respect to Applicant’s statements about its products.” See Gelber Decl. at ¶ 29.

Mere speculation that a fishing expedition might generate something is not adequate support for delaying consideration of a Motion for Summary Judgment. It is improper to delay consideration of a Motion for Summary Judgment on the mere hope “that issues of material fact *may be developed*.” *Nature’s Way Products Inc. v. Nature’s Herbs Inc.*, 9 USPQ2d 2077, 2081

(TTAB 1988) (“summary judgment need not be denied merely to satisfy a litigant’s speculative hope that it might find some evidence tending to support its case”) (emphasis added); *see also CashFlow Techs., Inc. v. NetDecide*, 2002 TTAB LEXIS 428, at *9 (TTAB. Feb. 7, 2002) (“A party cannot engage in a ‘fishing expedition’ in hopes of gathering some evidence to help its case”).

ACCORDINGLY, because the motion for discovery does not go to any essential issue, further delay and further discovery is unnecessary. The Motion for discovery should be OVERRULED.

Respectfully requested,

/jackawheat/

Jack A. Wheat
Mari-Elise Taube
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, Kentucky 40202-3352
Telephone: (502) 587-3400

Counsel for Alpha Omega Epsilon

CERTIFICATE OF SERVICE AND ELECTRONIC SUBMISSION

I hereby certify that a true copy of this item, Alpha Omega Epsilon's Opposition to Opposer's Rule 56(D) Motion for Discovery being filed electronically with the U.S. Patent and Trademark Office using the ESTTA service, and a copy has been served on counsel for Opposer by mailing a copy this 3rd day of November, 2014, via First Class Mail, postage prepaid, to:

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Thomas P. Gulick
Oren Gelber
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Ave.
Ossining, New York 10562

/jackawheat/

Jack A. Wheat

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Applicant's Exhibit 1

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\$ Min to \$ Max

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Brand

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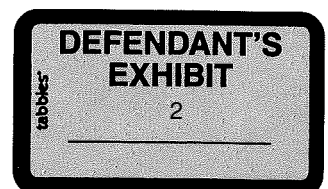
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Silver	301
Steel	82
Titanium	11
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Automatic	352
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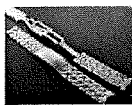
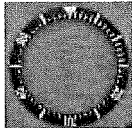






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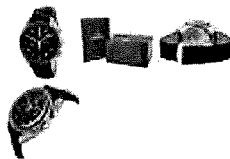
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Moonwatch Black Dial
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Brand	Omega
Model number	311.63.44.51.01.001
Gender	Mens
Series	Speedmaster Moonwatch
Watch Style	Luxury
Movement	Automatic
Engine	Omega 9301
Functions	Chronograph, Date, Hour, Minute, Second
Case Material	18kt Rose Gold
Case Shape	Round
Case Diameter	44.25 mm - View the watch size chart
Case Back	Transparent
Bezel	Uni-directional Rotating with Tachymeter
Dial Color	Black
Dial Type	Analog
Dial Markers	Index
SubDials	Two - 60 Second and 12 Hour
Hands	Gold-tone
Luminiscent	Hands and Markers
Bracelet	Black Alligator Leather
Band Length	9 inches
Band Width	24.1 mm
Clasp	Deployment with Push Button
Calendar	Date display at the 3 o'clock position
Water Resistant	100 meters / 330 feet
Crystal	Scratch Resistant Sapphire
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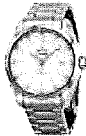
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Brand: Omega
Model number: 431.60.41.21.02.001
Gender: Mens
Series: DeVille Hour Vision
Watch Style: Luxury
Movement: Automatic
Functions: Date, Hour, Minute, Second
Case Material: 18kt Rose Gold
Case Shape: Round
Case Diameter: 41 mm - View the watch size chart
Case Back: Solid
Crown: Pull / Push
Bezel: Fixed 18kt Rose Gold
Dial Color: Silver
Dial Type: Analog
Dial Markers: Index
Hands: Gold-toned
Bracelet: 18kt Rose Gold
Clasp: Deployment
Calendar: Date display at the 3 o'clock position
Water Resistant: 100 meters / 330 feet
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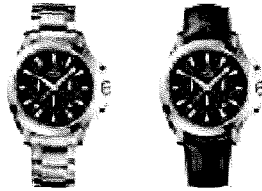
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Omega Seamaster Aqua Terra Chronograph Watch, round 18kt white gold case (44mm diameter) with screw-down crown and transparent case back, choice of 18kt white gold bracelet or alligator strap with 18kt white gold deployant buckle, black lacquered dial with teak pattern, date indication between 4 and 5 o'clock, chronograph function (central seconds, 30 min, 12 hr), Omega caliber 3313 self-winding Co-Axial movement with 52 hour power reserve, water-resistant to 150 meters.

The Aqua Terra represents a tribute to Omega's rich maritime heritage. The easily recognizable dial of the Omega Aqua Terra collection recalls the wooden decks

Misc017

of luxury sailboats. Co-Axial escapement for greater precision, stability and durability. Features include automatic winding in both directions to reduce winding time, the teak concept pattern dial, date window between the 4 and 5 o'clock position, and a chronograph with 30 minute and 12 hour registers. A 44mm diameter case provides ample size for most sportsmen and adventurers. At the heart of this watch beats the COSC certified caliber 3313 Co-Axial chronometer movement.

Applicant's Exhibit 2

TIPS FROM THE TTAB

*By T. Jeffrey Quinn**

Discovery Safeguards in Motions for Summary Judgment: No Fishing Allowed

Over the past few years, the Board has witnessed a dramatic increase in the filings of motions for summary judgment.¹ At one time, motions for summary judgment were infrequently filed and rarely granted. The United States Court of Appeals for the Federal Circuit ushered in a new era in the use of summary judgment motions in Board inter partes proceedings. In 1984, the court encouraged the adoption of summary dispositions of Board inter partes proceedings by way of summary judgment.² In subsequent opinions, the court has touted the advantages of summary judgment, and the practicing bar clearly has taken the court's encouragement to heart.³ Motions for summary judgment now constitute a significant portion of the Board Members' dockets.

Board Members are assigned inter partes cases for two types of decisions, namely (1) decisions at final hearing and (2) decisions on motions for summary judgment. In a recent fifteen-month period, the Board handled one-hundred eighty-five contested motions for summary judgment. During that time, summary

* Member, Trademark Trial and Appeal Board. The views expressed herein are those of the author and not necessarily those of the U.S. Patent and Trademark Office.

1. For an overview of summary judgment in Board proceedings, see generally: T. Jeffrey Quinn, *Tips From the TTAB: Inter Partes Summary Judgment Revisited*, 76 TMR 73 (1986); and David J. Kera, *Tips From the TTAB: Summary Judgment*, 71 TMR 59 (1981). For additional information and case citations, the following papers are commended (although their general availability is unknown): *Summary Judgment Motions Before the Trademark Trial and Appeal Board*, Veronica Colby Devitt, 1 APLA Selected Legal Papers B-1 (Winter and Spring 1983); *TTAB Practice Hints from the Practitioner: Survey of Summary Judgment at the Trademark Trial and Appeal Board, 1984 to date*, J. Paul Williamson, ABA-PTC Section, Fourth Annual Spring Educational Program, March 29-30, 1989; and *Review of Recent Trademark Cases Involving Summary Judgment Motions*, Laurence R. Hefter and T. Jeffrey Quinn, Eighth Annual Judicial Conference, U.S. Court of Appeals for the Federal Circuit, May 31, 1990.

2. *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 739 F2d 624, 222 USPQ 741 (CAFC 1984), affg 221 USPQ 151 (TTAB 1983). The court noted that voluminous records, which might be appropriate in trademark infringement or unfair competition litigation, are often unnecessary to resolution of the issue of federal registrability of a trademark.

3. See, eg: *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F2d 1560, 4 USPQ2d 1793 (CAFC 1987). In heralding the advantages of summary judgment dispositions of Board proceedings, the court has relied upon the summary judgment "trilogy" of cases decided by the United States Supreme Court. See: *Celotex Corp. v. Catrett*, 477 US 317, 106 S Ct 2548 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 106 S Ct 2505 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 US 574, 106 S Ct 1348 (1986).

judgment motions constituted approximately fifty-five percent of the inter partes cases assigned to Board Members for decision. Following the court's lead, the Board is no longer reluctant to dispose of cases on summary judgment, if appropriate. In those cases presented to the Board for summary judgment, approximately sixty percent were disposed of by such means.⁴

Not surprisingly, the increase in summary judgment motions has brought a concomitant increase in the number of motions requesting the discovery safeguard afforded under Federal Rule of Civil Procedure (FRCP) 56(f). The Board has seen, in the past, an increase in abuses in the area of pre-trial discovery.⁵ The Board fortunately is able to monitor and control any abuse that might arise in the context of discovery under FRCP 56. The purpose of this "Tips" is to review FRCP 56(f) and its function in the growing summary judgment practice before the Board.

When a party moving for summary judgment has supported its motion with affidavits or other evidence which, if unopposed, would establish its right to judgment, the non-movant, as required under FRCP 56(e), must counter with contravening evidence sufficient to create a genuine issue of material fact. If, however, the non-movant is unable to present contravening facts, FRCP 56(f) provides a built-in safeguard to prevent a rush to judgment or prematurely deciding a case before trial. FRCP 56(f) provides as follows:

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to

4. This figure, obviously, does not mean that a movant for summary judgment has a sixty percent chance of success before the Board. The Board is not averse to the entry of summary judgment in favor of the non-moving party, if warranted by the record. See, eg: *Visa International Service Assn. v. Life-Code Systems, Inc.*, 220 USPQ 740 (TTAB 1983). The above figure includes the granting of summary judgment in whole or in part, as well as the entry of summary judgment in favor of the non-moving party. The sixty percent figure would be even higher if uncontested motions (which are well-taken) were added to the list. See: Trademark Rule 2.127(a) [uncontested motions may be treated as conceded].

5. In an effort to address the growing concern about discovery abuses in inter partes proceedings, the Board, on November 16, 1989, adopted a new rule which limits the total number of written interrogatories which a party may serve to seventy-five, counting subparts, except in certain limited situations. See: Trademark Rule 2.120(d)(1). See generally: Carla Calcagno, *Tips From the TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)*, 80 TMR 285 (1990). Discovery under FRCP 56(f) in Board proceedings obviously is subject to the same limitation. Thus, when FRCP 56(f) discovery is coupled with general, pre-trial discovery, the total number of written interrogatories may not exceed the limit set forth in Trademark Rule 2.120(d)(1).

be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

A typical situation where FRCP 56(f) is invoked, and the one most commonly seen by the Board in well-taken motions under the rule, is where the non-movant cannot present by affidavit facts essential to justify its opposition to the summary judgment motion because knowledge of these facts is exclusively or largely within the control of the moving party. For example, where a defendant moves for summary judgment on the pleaded grounds of abandonment or fraud, the material facts bearing on those grounds may rest solely with the defendant. In those cases, the plaintiff, without discovery, may be at a severe, if not impossible, disadvantage in contravening the defendant's evidentiary showing on summary judgment. In that situation, the non-movant should present an affidavit showing that the knowledge or control of the facts surrounding the alleged fraud or abandonment is exclusively or largely with the moving party.⁶ The Board requires more than the non-movant's bare statement that the crucial information is within its opponent's knowledge; the party clearly needs to aver that further discovery is necessary.

A party requesting Rule 56(f) discovery should make the request by affidavit. The Board is surprised at the number of practitioners who, overlooking this requirement, make a Rule 56(f) request in a brief.⁷ If not presented in affidavit form, the Rule 56(f) request may be denied.⁸ Moreover, a party seeking the discovery option afforded under Rule 56(f) should make a crystal

6. *Dunkin' Donuts of America Inc. v. Metallurgical Exoproducts Corp.*, 840 F2d 917, 6 USPQ2d 1026 (CAFC 1988) [plaintiff's Rule 56(f) discovery request allowed since evidence of defendant's intent is pertinent in §§2(a) and 2(d) claims]; *Orion Group Inc. v. Orion Insurance Co. P.L.C.*, 12 USPQ2d 1923, 1924-25 (TTAB 1989) [Rule 56(f) discovery request allowed since facts relating to defendant's use of mark and compliance with United States insurance laws and regulations were in defendant's control].

7. *Sweats Fashions, Inc. v. Pannill Knitting Co. Inc.*, supra note 3, 4 USPQ at 1798-99 [party may not simply assert in a brief that discovery is necessary and avoid summary judgment when it failed to comply with the Rule 56(f) requirement to set out reasons for the need for discovery in an affidavit]; *Spectra Corp. v. Lutz*, 839 F2d 1579, 5 USPQ2d 1867, 1868-69 fn 4 (CAFC 1988) [non-movant had reasonable opportunity (one year) to conduct discovery; though non-movant argued the substance of Rule 56(f) in its opposition papers to summary judgment, it failed to file a Rule 56(f) affidavit]; *Avia Group International Inc. v. L.A. Gear California Inc.*, 853 F2d 1557, 7 USPQ2d 1548, 1551 (CAFC 1988) [familiar cry of non-movant that summary judgment granted before it completed discovery will not be heard on appeal when discovery precluded by its own failure to seek Rule 56(f) protection]; *Nature's Way Products Inc. v. Nature's Herbs Inc.*, 9 USPQ2d 2077, 2081 (TTAB 1989) [discovery sought was speculative and, in any event, non-movant failed to file a Rule 56(f) affidavit].

8. The Board has accepted Rule 56(f) affidavits signed by counsel, such affidavits falling within the spirit of the rule. Acceptance of counsel's affidavit is especially compelling in those situations where the party is not readily available to sign the affidavit, as is often the case with foreign litigants.

clear request to the Board. This request in affidavit form should not be a “throw-away” alternative accompanying a substantive response on the merits⁹ or ambiguous.¹⁰

The Rule 56(f) affidavit need not contain averments of facts going to the merits of the motion for summary judgment. Rather, it is sufficient that the party seeking Rule 56(f) discovery state, under oath, why it is as yet unable to present facts that show the existence of a genuine issue of fact for trial.¹¹ The Board, like the district courts, has liberally considered requests for Rule 56(f) discovery.¹² Nonetheless, the Board, again not unlike the district courts, take a dim view of lazy or dilatory parties and is much less tolerant of Rule 56(f) requests from such parties.¹³ The Board has consistently encouraged parties to take advantage of discovery as early as allowable under the FRCP.¹⁴ Early use of discovery is always a good idea, since it permits, at an early stage, a party to discover weaknesses in its adversary's case, discover corroborative facts or the lack of contradictory facts available to its adversary, and otherwise to be more fully informed of the opponent's case and facts.¹⁵ With the increased use of motions for summary judgment in Board proceedings, the tactical advantage of taking discovery early in the proceeding takes on greater importance. In adopting this practice, a party will have an earlier and more complete picture of the case, and be in a position to more easily show, when confronted with a motion for summary judgment, the existence of material fact issues remaining for trial. On the other hand, once the discovery period has closed, the Board is apt to look with disfavor upon a party which seeks to delay a case for Rule 56(f) discovery, if the party made no effort to obtain discovery during

9. Rule 56(f) requests are too often buried or hidden in other papers. If a party wishes to make a request for Rule 56(f) relief, it should do so in a separate paper (affidavit) which is clearly captioned as such. All too often a Rule 56(f) request is contained in a lengthy brief or is at the bottom of a stack of materials submitted by the non-movant to show the existence of a genuine issue of fact. The Board would prefer not to hunt through papers for a Rule 56(f) request and, accordingly, solicits counsel's assistance in bringing any such request to the Board's immediate attention.

10. *Keebler Co. v. Murray Bakery Products*, 866 F2d 1386, 9 USPQ2d 1736, 1738 (CAFC 1989) [“Prescience is not a required characteristic of the board. Thus the board need not divine all possible afterthoughts of counsel. . . .”].

11. Wright, Miller and Kane, *Federal Practice and Procedure: Civil* 2d §2740 (1983).

12. *Ibid.*

13. See: Annot, 47 ALR Fed 206[4] (1989).

14. Trademark Rule 2.120(a) [the opening of discovery is governed by the Federal Rules of Civil Procedure].

15. Saul Lefkowitz and Janet E. Rice, *Adversary Proceedings Before the Trademark Trial and Appeal Board*, 75 TMR 323, 380 (1985).

the discovery period.¹⁶ That party should not be rewarded for failing to proceed with diligence during the period of discovery.

Notwithstanding the spirit of liberality of FRCP 56(f), the Board will not, of course, allow Rule 56(f) discovery merely to satisfy a non-movant's speculative hope of finding some evidence through such discovery that might support its position. A party's hope or hunch that discovery might fortuitously create an issue of fact for trial is simply not enough.¹⁷ Rather, the non-movant must point to specific facts that the discovery will produce. This showing, as indicated earlier, is not a time for ambiguity and uncertainty; counsel needs to be specific or otherwise face the prospect of opposing summary judgment without the benefit of Rule 56(f) discovery.¹⁸ The affidavit needs to state reasons why the party cannot present by affidavit facts essential to justify its opposition to the motion for summary judgment. As the Federal Circuit has stated:

If all one had to do to obtain a grant of a Rule 56(f) motion were to allege possession by movant of "certain information" and "other evidence," every summary judgment decision would have to be delayed while the non-movant goes fishing in the movant's files.¹⁹

FRCP 56(f) allows the Board to deny a motion for summary judgment when the non-movant comes forward with a well-taken affidavit requesting discovery under the rule. The Board, however, rarely chooses this option.²⁰ Rather, the Board, as permitted under the rule, generally "order(s) a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." While there is a spirit of liberality that pervades requests for Rule 56(f) discovery, such requests need not raise the threat of voluminous or burdensome discovery. Rule 56(f) contemplates comparatively limited discovery. Accordingly, in allowing Rule 56(f) discovery, the Board has the power to tailor the discovery to the needs of the

16. A delay seems especially unwarranted when the discovery sought appears to be unlikely to result in a denial of the pending motion.

17. 6-Pt. 2 J. Moore and J. Wicker, *Moore's Federal Practice* ¶56.24 (1988).

18. *Keebler Co. v. Murray Bakery Products*, supra note 10, 9 USPQ2d at 1738. An affidavit falls short if the party only says, in essence, "we have no factual basis for opposing summary judgment, but, if you stay proceedings, we might find something." [Emphasis omitted].

19. *Id.* at 1739.

20. In those instances where a motion for summary judgment is clearly frivolous or the movant clearly has not met its initial burden to show the absence of evidence to support the non-movant's case, however, the Board may simply deny the motion for summary judgment, thereby rendering the Rule 56(f) request moot.

non-movant, thereby, in effect, foreclosing any discovery abuse. The Board limits the non-movant to only discovery essential to the non-movant's opposition to summary judgment. Moreover, the Board generally orders that this discovery be completed in a relatively short period of time, usually thirty days or less. A non-movant which has discovery requests pending at the time of the filing of a motion for summary judgment will want, at times, answers to all of its outstanding requests. However, the Board's Rule 56(f) order, if issued, would limit the discovery to that which is essential to oppose summary judgment. Full blown, pre-trial type discovery that looks like a fishing expedition into irrelevant or peripheral matters will not be granted.

There is a matter tangential to summary judgment discovery that is worthy of mention since it frequently comes up in Board cases. A recurring dispute brought to the Board for resolution involves the situation where answers to the non-movant's general, pre-trial discovery requests are due after the filing of the motion for summary judgment but before the Board suspends proceedings in the case. The non-movant often asks the Board to require that the movant respond to the discovery requests before the non-movant files its brief in opposition to the summary judgment motion. This request by the non-movant is not a classic Rule 56(f) request for discovery since the non-movant does not contend that it needs the discovery to enable it to respond; rather, the non-movant argues that, since the discovery was served early enough that responses were due prior to the suspension of proceedings, it is entitled to the benefit of responses to its pending discovery before filing a substantive objection to the motion for summary judgment.

The Board generally does not compel answers to these pending discovery requests. The Board, upon receipt of a motion for summary judgment, strives to issue a suspension order as quickly as possible.²¹ Technically, proceedings are not suspended unless and until the suspension order is issued by the Board.²² As a practical matter, however, if there is nothing in the record to suggest that the motion for summary judgment was filed as a means to avoid giving discovery responses, or was otherwise filed in bad faith, the Board will not require responses, even if a

21. Trademark Rule 2.127(d).

22. *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 USPQ 955, 965 (TTAB 1986). While the Board noted that, in certain situations, the filing of a motion for summary judgment may serve as good cause for not responding to pending discovery requests, the fact that counsel was not acting in good faith was a reason for the Board to compel responses that were due prior to the issuance of a suspension order.

suspension order has not been issued.²³ In such circumstances, the interests of judicial economy, especially with respect to the savings in time and money for the responding party, are best served by not requiring responses. The Board sees no reason to compel responses to the non-movant's discovery requests when the responses are not needed to respond to the summary judgment motion, especially since the motion may dispose of the case. Thus, where a party merely wants, rather than needs, discovery responses which fall due after the filing of a summary judgment motion but prior to suspension, that party is advised to refrain from filing a motion, unless, of course, as indicated above, there is some compelling reason set forth in a Rule 56(f) affidavit to require responses.

While the subject is beyond the scope of this Tip, the Board would be remiss if it did not briefly touch on two worthwhile "Tips" the Board can give to the bar based on recent summary judgment practice in inter partes proceedings. The first "Tip" concerns the non-movant's response on the merits to a summary judgment motion. Too many times the non-movant submits its contravening evidence and, in essence, merely states the conclusion that "facts are in dispute," leaving to the Board the tedious task of digging out the disputed fact(s), if indeed any exists. A non-movant often matches the movant's evidence "pound for pound" and "inch for inch" and says, more or less, "there has to be a material issue of fact somewhere in this big record . . . Board, go and find it." The far better practice, and the one strongly encouraged by the Board, is for the non-movant, in its brief, to specifically identify or list the material fact(s) in dispute and point to the particular evidence which shows that the fact(s) is in dispute. This "tell and show," when done in response to a motion for summary judgment, provides invaluable assistance to the Board. Moreover, the non-movant, by telling the Board what the disputed material facts are, and then showing where the disputed facts exist in the record, puts its position in the best possible light.

The second "Tip" is directed to the movant. In many inter partes cases, there is often no dispute as to most of the underlying facts. Counsel, in moving for summary judgment, should be acutely aware that, in such situations, he or she needs to show the Board the difference between a lack of dispute as to facts and a disagreement as to the interpretation to be placed upon such facts.

23. If there are discovery requests outstanding against a party at the time when it files a motion for summary judgment, it is a good idea for the party to file, with its motion, a request that if the motion is denied, the party be allowed until a certain time thereafter in which to respond to the outstanding discovery requests.

Again, a listing of material facts not in dispute, with specific references to evidence, is a great help to the Board. Obviously, a disagreement over legal interpretations, often argued by a non-movant but couched in terms of a dispute over material facts, does not mean that a case is inappropriate for summary judgment.

While the mandate of Rule 56(f) discovery is liberal to guard against a party being “railroaded”²⁴ on summary judgment, that does not mean that any and all requests for such discovery will be granted in a “knee-jerk” fashion. A party seeking the shelter of Rule 56(f) must comply with the standards enunciated by the Federal Circuit and followed by the Board. The non-movant who does otherwise may find itself in the unenviable position of defending against summary judgment with less than a complete arsenal of facts to show a genuine issue of material fact.

24. Celotex Corp. v. Catrett, *supra* note 3 at 326, 106 S Ct at 2554.

Applicant's Exhibit 3

DECLARATION OF JANINE WAMPLER
(ALPHA CHI OMEGA)

Comes the undersigned, Janine Wampler, and understanding the statements made herein are made under penalty of perjury, she declares as follows:

1. I, Janine Wampler, am the Marketing and Communications Director of Alpha Chi Omega Fraternity, Inc. ("Alpha Chi Omega") an Indiana corporation headquartered at 5939 Castle Creek Pkwy North Dr., Indianapolis, IN 46250-4343.

2. Alpha Chi Omega is a collegiate based fraternal organization for women. It was founded in 1885, and has continually been in operation since the founding. Alpha Chi Omega currently consists of more than 130 active chapters at various colleges and universities, as well as approximately 200 alumnae member chapters located throughout the United States.

3. My duties as the Marketing and Communications Director of Alpha Chi Omega include overseeing the use of the ALPHA CHI OMEGA name, the Greek alphabet letters, AXΩ, or any other insignia of Alpha Chi Omega on any merchandise, and I have oversight of any business records accumulated by Alpha Chi Omega in the ordinary course of its business relating to the merchandising of the insignia of Alpha Chi Omega.

4. Like collegiate fraternities and sororities in general, Alpha Chi Omega is extensively engaged in procuring producers and licensing vendors of merchandise bearing the insignia of the fraternity to be acquired by members of the organization to indicate their membership in the organization, including a wide variety of items such as jewelry, clothing, banners, flags, decals, stationary, and so forth.

5. Attached to this declaration and incorporated by reference are true copies of materials displaying and marketing various examples of approved merchandise bearing the name ALPHA CHI OMEGA, our Greek alphabet letters, AXΩ, and other Alpha Chi Omega insignia.

6. The target market for merchandise bearing our insignia is, of course, members of our organization, as well as parents and friends of members who may wish to purchase Alpha Chi Omega merchandise as gifts for our members.

7. Our merchandise is most commonly produced and marketed by licensed vendors who specialize in the production and marketing of fraternity and sorority merchandise and is most commonly marketed through college bookstores, Greek merchandise shops located near colleges and universities, through direct mailings to members of the organization, and on internet websites maintained by the merchandise vendors advertising fraternity and sorority merchandise. Examples of typical Greek merchandise websites advertising our merchandise, including www.greekcreations.com, www.somethinggreek.com, and www.hjgreek.com are attached hereto and incorporated herein by reference.

8. The very first item of merchandise bearing insignia of our organization was a jewelry item, namely, the members badge designed by the founders of our organization and utilized at the official founding of the organization in 1885. A photograph of the very first badge utilized by our organization is reproduced on the first page of the attachment hereto. The design of the badge of our fraternity dating continuously back to 1885 has always consisted of the representation of a Greek lyre with an image of a sash or banner bearing the Greek alphabet letters AXΩ.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, hereby declares that all statements made by me above in this document are made based on my personal knowledge and are understood to be true and correct to the best of my knowledge and belief.

AL169:00AL1:987061:1:LOUISVILLE

Janine Wampler
7.25.14





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Crown Diamond Badge J70010106

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Like 0

Crown Pearl Vintage Badge J70010089

The most recognized symbol of Alpha Chi Omega, the badge! This style offers crown pearls set in a beautiful handcrafted crown setting.

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Like 3

Swirl Ring with *Garnets R70011000

Our fashionable, unique Alpha Chi Omega swirl ring is beautifully accented by three garnet* stones set in a subtly wrapped ribbon band. Comes in a leather presentation box. Ring measures 1/4"W across stones and Greek letter engraving.

*Colored stones are synthetic.

Select Ring Size:

Select Metal Quality:

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Like 0

Swirl Ring with CZ's R70011000C

Band is 1/4" at widest point across stones and engraving.

Select Ring Size:

Select Metal:

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Like 5

Wynterice Watch J7001WYNTERIC

Polished ionic plated brass casing accented with sparkling crystals with a stainless steel backing. The Sunray silver tone dial detail includes Alpha Chi Omega Greek letters and 12, 3, 6, and 9 hour marks. Complete with a padded genuine white leather band. This watch is a must have! Watch face measures 1 1/2" dia.

Price: \$40.00

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 <p>Zeta Phi Beta Sorority...</p>	 <p>Zeta Tau Alpha Sorority...</p>	 <p>Gamma Sigma Sigma Sorority...</p>
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 click to see more Alpha Chi Omega 24-Hour Hooded Sweatshirt Our Price: \$43.95	 click to see more Alpha Chi Omega California Fleece Zip Hood Our Price: \$40.99	 click to see more Alpha Chi Omega Ladies' Pullover Hoodie Our Price: \$40.95
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Alpha Chi Omega Greek Lanyard

Price: **\$6.95**

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Carry your keys the Alpha Chi Omega way.



Alpha Chi Omega I.D. Holder

Price: **\$3.95**

VIEW

Show off Alpha Chi Omega wherever you go.



Alpha Chi Omega Key Chain

Price: **\$12.95**

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Your lyre symbol and Alpha Chi Omega letters can't get any cuter!



Alpha Chi Omega Lyre Tray

Price: **\$9.95**

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Keep all of your Alpha Chi Omega jewelry in one colorful place!



Alpha Chi Omega Paddle Key Chain

Price: **\$3.95**

Sale Price: **\$3.16**

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4 inch acrylic paddle shaped keychain with mirror back and the A Chi O letters

ON SALE !!!



Alpha Chi Omega Paddle Magnet

Price: **\$3.95**

Sale Price: **\$3.16**

VIEW

4 inch acrylic paddle shaped magnet with mirror back and the A Chi O letters

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Alpha Chi Omega Pillowcase

Price: **\$13.95**

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Sleep tight on this cute Alpha Chi Omega pillowcase.



Alpha Chi Omega T-Shirt Key Chain

Price: **\$3.95**

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Dress up your keys with this cute Alpha Chi Omega keychain!

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A Chi O Vinyl Sticker Mixed Set

Price: **\$7.95**

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Great set of mixed Alpha Chi Omega vinyl stickers

ALPHA CHI OMEGA

Alpha Chi Omega 18 Inch Window Decal

Price: **\$3.95**

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Get Alpha Chi Omega noticed on the road.



Alpha Chi Omega Colored EyeBlack

Price: **\$3.99**

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Original Alpha Chi Omega Eye Black Glare Guard Fan Wear



Alpha Chi Omega Creative Nails

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Get creative with your A Chi O hands with these nail appliques.



Alpha Chi Omega Crest Window Decal

Price: **\$4.95**

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Your Alpha Chi Omega crest has never looked so good.



Alpha Chi Omega Latex Balloons (5pk)

Price: **\$5.95**

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Make a statement at your next A-Chi-O soiree!



Alpha Chi Omega Letters & Name Decal

Price: **\$4.95**

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Show off Alpha Chi Omega on the road.



Alpha Chi Omega Mylar Balloon

Price: **\$3.95**

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Lift your Alpha Chi Omega love high!



Alpha Chi Omega Name Window Decal

Price: **\$6.95**

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This classic Alpha Chi Omega decal looks great anywhere!



Alpha Chi Omega Oval Decal

Price: **\$4.95**

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Make your Alpha Chi Omega letters stand out!



Alpha Chi Omega Reflective Vinyl Decal

Price: **\$5.95**

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Display your Alpha Chi Omega letters on the highway.



Alpha Chi Omega Round Bumper Sticker

Price: **\$3.95**

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Make all the other cars jealous.



Alpha Chi Omega Scrapbook Decal Collection

Price: **\$6.95**

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A Chi O and generic sorority memory album approved stickers.



Alpha Chi Omega White Letters Window Decal

Price: **\$5.95**

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A classic decal with your Alpha Chi Omega letters in white.



Alpha Chi Omega Clipboard

Price: **\$14.95**

Sale Price: **\$3.74**

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It's the perfect accessory for your Alpha Chi Omega events!

ON SALE !!!



Alpha Chi Omega Memo Note Cube

Price: **\$5.95**

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500 ways to leave your A-Chi-O sister a note!



Alpha Chi Omega Peace Pen

Price: **\$4.95**

Sale Price: **\$0.50**

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Alpha Chi Omega Sorority Mascot Notepad

Price: **\$4.95**

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Alpha Chi Omega Square Note Pad

Price: **\$8.95**

Sale Price: **\$1.79**



Alpha Chi Omega Sticky Tab Book

Price: **\$9.95**

Sale Price: **\$6.97**

These A-Chi-O pens are groovy!

ON SALE !!!

Perfect for those 'just because' notes to your Alpha Chi Omega sisters.

VIEW

An adorable desktop accessory with Alpha Chi Omega name and lyre symbol.

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VIEW

Leave a little note for your favorite Alpha Chi Omega sis.

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Applicant's Exhibit 4

DECLARATION OF WYNN SMILEY
(ALPHA TAU OMEGA)

Comes the undersigned, Wynn Smiley, and understanding the statements made herein are made under penalty of perjury, he declares as follows:

1. I, Wynn Smiley, am the Chief Executive Officer of Alpha Tau Omega Fraternity, Inc. ("Alpha Tau Omega"), a Maryland corporation headquartered at One North Pennsylvania Street, 12th Floor, Indianapolis, IN 46204.

2. Alpha Tau Omega is a collegiate based fraternity. It was founded in 1865, and has continually been in operation since the founding. Alpha Tau Omega currently consists of approximately 140 active chapters at various colleges and universities located throughout the United States.

3. My duties as the Chief Executive Officer of Alpha Tau Omega include overseeing the use of the ALPHA TAU OMEGA name, the Greek alphabet letters, ATΩ, or any other insignia of Alpha Tau Omega on any merchandise, and I have custody and control of any business records accumulated by Alpha Tau Omega maintained in the ordinary course of its business relating to the merchandising of the insignia of Alpha Tau Omega.

4. Like collegiate fraternities and sororities in general, Alpha Tau Omega is extensively engaged in procuring producers and licensing vendors of merchandise bearing the insignia of the fraternity to be acquired by members of the organization to indicate their membership in the organization, including a wide variety of items such as jewelry, clothing, banners, flags, decals, stationary, and so forth.

5. Attached to this declaration and incorporated by reference are true copies of materials displaying and marketing various examples of approved merchandise bearing the name ALPHA TAU OMEGA, our Greek alphabet letters, ATΩ, and other Alpha Tau Omega insignia.

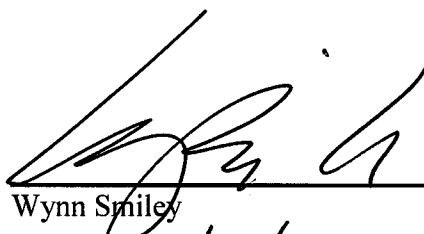
6. The target market for merchandise bearing our insignia is, of course, members of our organization, as well as parents and friends of members who may wish to purchase Alpha Tau Omega merchandise as gifts for our members.

7. Our merchandise is most commonly produced and marketed by licensed vendors who specialize in the production and marketing of fraternity and sorority merchandise and is most commonly marketed by Alpha Tau Omega through our on-line store associated with the fraternity's website, accessible at <http://www.ato.org/AlphaTauOmega/atohistory/atocreed.aspx>, and through college bookstores, Greek merchandise shops located near colleges and universities, through direct mailings to members of the organization, and on internet websites maintained by the merchandise vendors advertising fraternity and sorority merchandise such as www.hjgreek.com. Excerpts from our on-line store and the www.hjgreek.com website are attached hereto and incorporated herein by reference. There are numerous other Greek merchandise specific websites which market our merchandise, including www.justgreek.com, www.campus-classics.com, www.greekforme.com, www.greekgear.com, www.greekcreations.com, www.somethinggreek.com, and www.metrogreek.com.

8. The very first item of merchandise bearing insignia of our organization was a jewelry item, namely, the member's badge designed in 1865 by Otis Allan Glazebrook, a founder of our fraternity. The basic design of the members badge consist of a Maltese cross shape bearing our Greek letter insignia, ATΩ. Three photographs of samples of our member badges are

reproduced on the first page of the attachment hereto. The basic design of our member badges have been continuously used since our founding in 1865.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, hereby declares that all statements made by me above in this document are made based on my personal knowledge and are understood to be true and correct to the best of my knowledge and belief.


Wynn Smiley
Date: 7/25/14

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Featured Product



Tie Bar
Tie bar mounted with Alpha Tau Omega enameled crest in Gold Filled. 2" x 1/4"

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Formal Shirt Stud Set (of 4) w/Badge Replica J00955001

Set of Four(4) Studs, securely fashioned with enameled badge replica mounting, with a spring-loaded stud backing to be worn with formal shirt attire in gold-filled. The perfect gift for an ATO groomsman or gentleman who wears formal attire occasionally.

Select Metal Quality:

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Product returns must be made within thirty (30) days of ship date for reasons unrelated to a quality defect or incorrect item. Products that are customarily stocked by Herff Jones and that are returned for reason(s) other than product quality are subject to a restocking fee of 25% of order value.

Custom-made products are not returnable; this includes all rings and any other non-stock jewelry items. Customer is responsible for any postal or shipping charges incurred in returning the product to the Greek Division of Herff Jones

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Like 4

Oval Cufflinks w/Badge Replica J00954001GF

Oval Cufflinks, highly polished, with the ATO badge replica with black enamel mounted in center of link. Gold-filled, not gold-plated -- 1/10th 10K gold-filled. The perfect accessory gift for the ATO who has everything ... but who might occasionally wear cufflinks. 1/2" H X 13/16" W

Price: \$88.00

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Pendant



Traditional
Lavalier



Ingot Charm
with Enameled
Crest



Heart Lavalier



Filigree Charm
w/Enameled
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Crown Pearl
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Like 0

Traditional Lavalier L2647ALTAOM

The most popular lavalier in our line. This traditional lavalier or "drop" featuring ATO Greek letters is oriented vertically as a pendant. Finely polished on all surfaces. (Chain sold separately.) 3/4" L.

Select Metal Quality:

ADD TO CART

Product returns must be made within thirty (30) days of ship date for reasons unrelated to a quality defect or incorrect item. Products that are customarily stocked by Herff Jones and that are returned for reason(s) other than product quality are subject to a restocking fee of 25% of order value.

Custom-made products are not returnable; this includes all rings and any other non-stock jewelry items. Customer is responsible for any postal or shipping charges incurred in returning the product to the Greek Division of Herff Jones

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Like 0

Heart Lavalier L2604ALTAOM

Heart lavalier with ATO letters cast within in diagonal fashion. Nicely weighted and fully polished on all surfaces. (Chain sold separately.) 9/16" h.

Select Metal Quality:

ADD TO CART

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[Catalog](#) » [Alpha Tau Omega](#) » [Rings](#) » Life Loyal Tau Ring



Like 0

Life Loyal Tau Ring R00951449

Introducing a new ring available to Life Loyal Tau members. This ring features a large round base with ATO badge shape with enameled background. Engrave your name or initials (up to 15 characters) inside the ring at no extra charge. Comes to you in a custom leather ring presentation box.

1 **Configure** 2 Set Quantity 3 Engravings

Select Ring Size:

Select Metal Quality:

CONTINUE

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\$3.98

Collapsible Black Can Holder
'Cross'



\$3.98

Collapsible Navy Can Holder
'ATO Greek Letters'



\$3.98

Collapsible Black Can Holder
'Cross'



\$3.98

Collapsible Black Can Holder
'ATO Greek Letters'



\$8.98

Collapsible Black Bottle Koozie
'Cross'



\$8.98

Collapsible Black Bottle Koozie
'ATO Greek Letters'



\$14.98

Full Color White Mug 15oz
'Cross'



\$14.98

Full Color White Mug 15oz
'Official Logo'



\$14.98

Full Color Black Mug 15oz
'Official Logo'



\$14.98

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Fleece Full Zip Royal Jacket
'ATO Greek Letters'
 Item# 6-34-IK17RA
 Ready for layering, this cozy full-zip fleece jacket will keep you warm when the weather isn't. Comfortable and versatile, it's great for life on the go.

- 100% spun soft polyester fleece with non-pill surface finish
- Embroidered logo
- Midweight fleece - highly breathable
- Dyed-to-match zippers and zipper pull, bottom hem with drawcord and toggles
- Front-zip pockets, front yoke, non-roll elastic cuffs

Enter Desired Quantities

0	\$39.98 Small
0	\$39.98 Medium
0	\$39.98 Large
0	\$39.98 X-Large
0	\$45.98 XX-Large (+\$6.00)
0	\$48.98 XXX-Large (+\$9.00)
0 \$0.00 Total	

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Navy/White Umbrella

'ATO Greek Letters'

Item# 6-71-IK0113A

Stay safe and beat the elements in classic style...this sporty umbrella is a must-have accessory and its contrasting color will make you stand out, even on the dreariest day!

- Nylon fabric, fiberglass windproof frame, genuine wood handle
- Screen printed logo
- Fiberglass shaft and ribs provide added safety from the elements
- Manual open; pinch-proof runner to protect fingers
- Folded length-43 inches; diameter-54.4 inches; arc-64 inches

[Q](#)

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1	\$39.98 Total

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Royal/White Umbrella 'Official Logo'

Item# 6-71-IK4112

Stay safe and beat the elements in classic style...this sporty umbrella is a must-have accessory and its contrasting color will make you stand out, even on the dreariest day!

- Nylon fabric, fiberglass windproof frame, genuine wood handle
- Screen printed logo
- Fiberglass shaft and ribs provide added safety from the elements
- Manual open; pinch-proof runner to protect fingers
- Folded length-43 inches; diameter-54.4 inches; arc-64 inches

[Q](#)

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Gold Heavyweight Twill Pro Style Hat
'ATO Greek Letters'
 Item# 6-38-IK1638A

Classic and relaxed, this pro style hat offers a laid-back medium profile and a flexible fit that will compliment any casual fashion look.

- 100% cotton
- Embroidered logo
- Structured; firm front panel; low-fitting; 6-panel cap
- Seamed front panel with full buckram, 6 embroidered eyelets, Pro Stitch on crown, 6 rows stitching on visor
- Matching fabric undervisor, matching color sweatband, and matching fabric adjustable strap with velcro closure

Enter Desired Quantities

1 \$19.98

1 **\$19.98 Total**

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**Gold Twill Button Down Long Sleeve
'ATO Greek Letters'**

Item# 6-34-IK1635

Designed for style and comfort, this super soft peached twill shirt will become one of your favorites - it's a great choice for any day of the week, whether you're going for a business or casual look.

- 100% cotton
- Embroidered logo
- Button down collar, center back collar button with adjustable cuff, wood tone buttons
- Wood tone buttons
- Left chest pocket

[Q](#)

Enter Desired Quantities

0	\$39.98	Small
0	\$39.98	Medium
0	\$39.98	Large
0	\$39.98	X-Large
0	\$42.98	XX-Large (+\$3.00)
0	\$45.98	XXX-Large (+\$6.00)
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0	\$0.00 Total	

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**White Mini Stripe Polo
'ATO Greek Letters'**
Item# 6-34-IK19VSD

A step up in style from the everyday polo, this eye-catching mini-stripe shirt takes casual dressing to the next level. It looks great whether you're on the course with clients or having dinner at the clubhouse.

- Syntrel Extreme Moisture Management Polyester
- Embroidered logo
- Tonal mini stripe knit
- Fashion collar
- Open hemmed sleeve

Enter Desired Quantities

0 \$43.98 Small

0 \$43.98 Medium

0 \$43.98 Large

0 \$43.98 X-Large

0 \$47.98 XX-Large (+\$4.00)

0 \$50.98 XXX-Large (+\$7.00)

0 \$0.00 Total

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**Black T Shirt
'Official Logo'**

Item# 6-33-IK1291C

Practical, basic t-shirt that can be layered or worn alone. You can never have too many of these versatile shirts in your closet - just toss one on and go.

- 6.1 oz 100% cotton jersey
- Screen printed logo
- Seamless rib collar
- Double-needle cover stitching
- Crew neck

Enter Desired Quantities

0	\$16.98	Small
0	\$16.98	Medium
0	\$16.98	Large
0	\$16.98	X-Large
0	\$22.48	XX-Large (+\$5.50)
0	\$22.98	XXX-Large (+\$6.00)
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Applicant's Exhibit 5

DECLARATION OF CAROL MIRAGLIA
(CHI OMEGA)

Comes the undersigned, Carol Miraglia, and understanding the statements made herein are made under penalty of perjury, she declares as follows:

1. I, Carol Miraglia, am the Chief Financial Officer of Chi Omega Fraternity ("Chi Omega") an Ohio corporation headquartered at 3395 Players Club Parkway, Memphis, TN 38125.

2. Chi Omega is a collegiate based fraternal organization for women. It was founded in 1895, and has continually been in operation since the founding. Chi Omega is the largest fraternal organization for women in the world; over its nearly 120 year history more than 320,000 women have been members of the organization. Chi Omega currently consists of nearly 180 active chapters at various colleges and universities, as well as over 240 alumnae member chapters.

3. My duties as the Chief Financial Officer of Chi Omega include overseeing the use of the CHI OMEGA name, the Greek alphabet letters, XΩ, or any other insignia of Chi Omega on any merchandise, and I have custody and control of any business records accumulated by Chi Omega in the ordinary course of its business relating to the merchandising of the insignia of Chi Omega.

4. Like collegiate fraternities and sororities in general, Chi Omega is extensively engaged in procuring producers and licensing vendors of merchandise bearing the insignia of the fraternity to be acquired by members of the organization to indicate their membership in the

organization, including a wide variety of items such as jewelry, clothing, banners, flags, decals, stationary, and so forth.

5. Attached to this declaration and incorporated by reference are true copies of materials displaying and marketing various examples of approved merchandise bearing the name CHI OMEGA, our Greek alphabet letters, XΩ, and other Chi Omega insignia.

6. The target market for merchandise bearing our insignia is, of course, members of our organization, as well as parents and friends of members who may wish to purchase Chi Omega merchandise as gifts for our members.

7. Our merchandise is most commonly produced and marketed by licensed vendors who specialize in the production and marketing of fraternity and sorority merchandise and is most commonly marketed by Chi Omega through our on-line store Chi O Creations accessible through the fraternity's website at <http://shop.chiomega.com/>, and through college bookstores, Greek merchandise shops located near colleges and universities, through direct mailings to members of the organization, and on internet websites maintained by the merchandise vendors advertising fraternity and sorority merchandise such as www.hjgreek.com. Excerpts from our on-line store and the www.hjgreek.com website are attached hereto and incorporated herein by reference. There are numerous other Greek merchandise specific websites which market our merchandise, including www.justgreek.com, www.campus-classics.com, www.greekgear.com, www.greekcreations.com, www.somethinggreek.com, and www.metrogreek.com.

8. The very first item of merchandise bearing insignia of our organization was a jewelry item, namely, the members badge designed by Dr. Charles Richardson, a dentist who created for our organization out of dental gold a breast pin consisting of the Greek alphabet letter

“X” in front of the Greek alphabet letter “Ω.” A photograph of the very first badge utilized by our organization is reproduced on the first page of the attachment hereto. The original badge of our fraternity created in 1895 has been continuously in use as the base design for our member badges ever since. A current sample of our member badge is displayed on page 2 of the attachment to this Declaration.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, hereby declares that all statements made by me above in this document are made based on my personal knowledge and are understood to be true and correct to the best of my knowledge and belief.

Carol Miraglia
Carol Miraglia
Date: 7-25-14

AL169:00AL1:987061:1:LOUISVILLE

HISTORY



Chi Omega's First Badge

One of Chi Omega's five founders, Dr. Charles Richardson, designed the first badge, which was made with scraps of hammered dental gold.

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Psi Chapter, 1906



Chi Omega's First Badge



Chi Omega Badge

HISTORY



Chi Omega Badge

At Convention in 1906, the Chi Omega badge was standardized and the types of stones allowed were limited to only pearls or diamonds.

"Our badge represents the pride and honor that members feel as representatives of our Fraternity."

~Lyn Harris, National Archivist

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Psi Chapter, 1906



Chi Omega's First Badge



Chi Omega Badge

HISTORY



Chi Omega Crest

Chi Omega's crest was adopted in 1902.

Centered on the crest is the white carnation, with the Chi to the left and the Omega to the right of the flower. Above these symbols are both the skull and crossbones and the owl. Beneath the carnation are the five letters, Rho, Beta, Upsilon, Eta and Sigma. A laurel wreath, used by ancient Greeks to honor scholars and heroes, surrounds all of the emblems known and loved by Chi Omegas.

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Chi Omega's Symbol



Chi Omega Crest




The Eleusis

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Bid Day Pack A

2014A

Get ready to welcome new members with this perfect present! Includes an I♥XΩ button, owl cookie cutter, small sticky note pad and XΩ is fun pen, I♥XΩ bumper sticker, stadium cup, frameable Symphony, and clear and gold XΩ decal, all wrapped in the perfect Chi Omega gift bag!

Retail price: \$13.85

Savings of: \$3.85 per pack

Disclaimer: Items in bid day packs are subject to change at our discretion due to their high demand.

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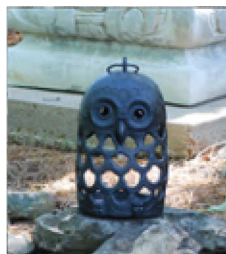
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Departments > Totes and Accessories

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Totes And Accessories



Bags, wallets, ID holders and makeup bags are just a few of the fun items in our Totes and Accessories department. Tote your belongings in Chi Omega style!

SHOP BY CATEGORY

- [Key Rings](#)
- [Makeup Bags](#)
- [Miscellaneous](#)
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- [Wallets, ID Holders, And Purses](#)

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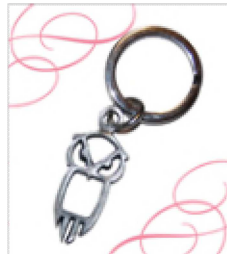
Key Rings



[XΩ Key Ring](#)
\$8.50



[XΩ Umbrella](#)
\$20.00



[Hoot Owl Key Ring](#)
\$10.00



[Mascot Keychain](#)
\$9.00



[XΩ Polka Dot Ribbon Key Ring](#)
\$12.00



[XΩ Stripe Ribbon Keyring](#)
\$12.00



Ribbon Key Ring/Yellow
w/White Dot
\$12.00



Olive Owl Key Cover
\$6.50



ΧΩ Charm Key Ring
\$10.00



Mirror Owl Key Chain
\$3.50



Owl Key Cover
\$6.50



Chevron Ribbon Key Ring
\$13.50



Large Ribbon Key Ring
\$16.00



Owl Token Key Ring
\$6.00

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Who's Your Sister Pillowcase

664

Egyptian cotton pillowcase with Chi Omega letters, a cute owl, and the phrase, "Whooooo's your sister?" on the top! Also available to be customized (item #664P).

\$19.00I want: [Add to Shopping Bag](#)[Add to Wishlist](#)[Continue Shopping](#)[Checkout](#)[View Zoom](#)

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- [Cups - Mugs](#)
- [Desk - Office](#)
- [Frames - Albums](#)
- [Kitchen](#)
- [Miscellaneous](#)

Try These Too...



[Owl Tote Note](#)
\$5.50



[Owl Pajama Pants](#)
\$37.50




[Red Abstract Chi Omega Symbols Ornament](#)
\$44.50

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Owl Pajama Pants

747

Calling all owl lovers! Don't miss these adorable and comfortable pajama pants with yellow owls.

100% cotton with elastic-waist and red grosgrain trim.

\$37.50Size: I want:  [Add to Shopping Bag](#) [Add to Wishlist](#) [Continue Shopping](#) [Checkout](#) [View Zoom](#)

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Try These Too...



[Love You Forever Owl Token](#)
\$6.75



[Let It Be Mug](#)
\$16.75



[Owl Umbrella Stand / Vase](#)
\$148.00

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Departments > Clothing

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Clothing



Chi O Creations offers an array of clothing that lets you show your love for Chi Omega! Whether it's an embellished tee, cozy fleece, or bright scarf, our boutique is brimming with cute attire for all seasons.

SHOP BY CATEGORY

- Bath
- Bottoms
- Family
- **Footwear**
- Hats - Caps
- Jackets - Outerwear
- Scarves - Eyewear
- Sweatshirts
- Tops

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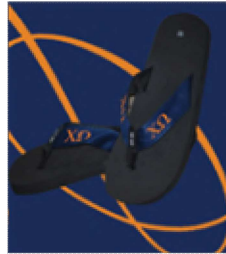
Footwear



[Chi Omega Athletic Socks](#)
\$12.00



[XΩ Flip Flops - Black](#)
\$24.50



[Auburn University Flip Flops](#)
\$22.00



[XΩ Polka Dot Flip Flops](#)
\$22.00



[Louisiana State University Flip Flops](#)
\$22.00



[Neon XΩ Flip Flops](#)
\$21.50



Ohio State Flip Flops
\$22.00



University of Tennessee
Flip Flops
\$22.00



Bright Owl Socks
\$15.00

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White Leather XΩ Watch

103

How cute! A white leather XΩ watch!
The watch face is surrounded by tiny
crystals and features silver letters and
numbers.

\$65.00I want: [Add to Shopping Bag](#)[Add to Wishlist](#)[Continue Shopping](#)
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- [Earrings](#)
- [Necklaces](#)
- [Pin Boxes](#)
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- [Rings](#)

Try These Too...



[Groovy Owl Notepad](#)
\$5.00



[Symphony Folded Notes](#)
\$11.00



[Pearl Bracelet with XΩ disc charm](#)
\$32.00

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Pearl Bracelet With XΩ Disc Charm

578

How lovely! Freshwater pearl bracelet features 7mm pearls and a silver XΩ disc charm.

Dimension: 7.5" L

\$32.00

I want:

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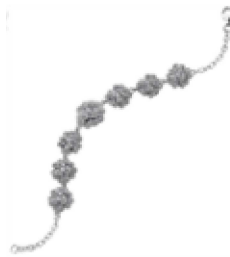
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- [Charms](#)
- [Earrings](#)
- [Necklaces](#)
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Try These Too...



[Be Happy Owl Mug](#)
\$16.75



[Carnation Bracelet](#)
\$75.00



[Antique Silver Rufous Owl Necklace](#)
\$16.00

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Oval Tag Bracelet

450

This bracelet is a classic piece for any Chi Omega. Silver plated link chain features a tag with "Est. 1895, XΩ, Chi Omega."

Measures 7.5" long.

\$18.00

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- [Necklaces](#)
- [Pin Boxes](#)
- [Pins / Pendants](#)
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Try These Too...



[Blue Medium Owl Pitcher](#)
\$35.00



[Owl Infant Gown](#)
\$17.00



["Hoo's There" Owl Door Mat](#)
\$62.50

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Departments > Jewelry > Bracelets > Chi Omega Charm Bracelet

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Chi Omega Charm Bracelet

862

Sterling silver Chi Omega charm bracelet with 0.5" XΩ and 0.75" owl charms.

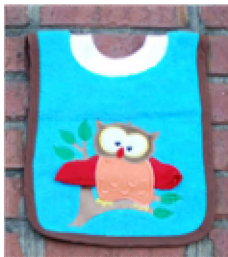
Dimension: 7" link chain

**\$83.00**I want: [Add to Shopping Bag](#)[Add to Wishlist](#)[Continue Shopping](#)[Checkout](#)[View Zoom](#)

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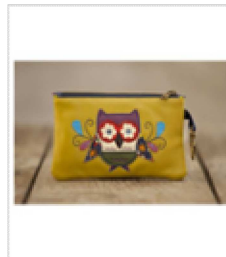
Try These Too...



[Boy Owl Washcloth and Bib Set](#)
\$14.00



[Pink Owl Feeding Bib](#)
\$21.00



[Colorful Owl ID Pouch](#)
\$15.00

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Crystal XΩ Pin

1059

Swarovski crystal XΩ pin. A dainty and elegant way to show your love for Chi Omega.

Dimensions: 0.25" L x 0.75" W

\$18.00

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Jewelry

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- [Earrings](#)
- [Necklaces](#)
- [Pin Boxes](#)
- [Pins / Pendants](#)
- [Rings](#)

Try These Too...



[Brown Owl Laptop Case](#)
\$34.00



[Symphony Tee](#)
\$26.50



[Louisiana State University Flip Flops](#)
\$22.00

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Greek Letter Ring

1077

Sterling silver ring with XΩ.

\$32.00Size: I want: [Add to Shopping Bag](#)[Add to Wishlist](#)[Continue Shopping](#)
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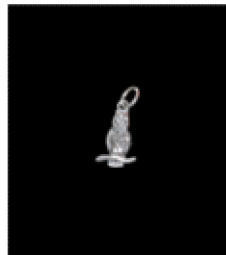
Try These Too...



[XΩ Toothbrush](#)
\$3.00



[White Leather XΩ Watch](#)
\$65.00



[Modeled Owl Charm](#)
\$16.00

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Heritage Ring

913

Sterling silver. Greek Chi Omega symbols and 1895 incised on the front. "Chi Omega" spelled out on the inside of the band for added detail. This ring is a must have! Available in whole sizes 6-8.

This item takes four weeks for delivery.
It will be worth the wait!

\$62.00Sizes: I want: [Add to Shopping Bag](#)[Add to Wishlist](#)[Continue Shopping](#)
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Jewelry

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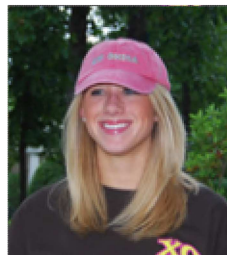
Try These Too...



[Chi Omega Letter Basket](#)
\$50.00



[Polka Dot Tumbler](#)
\$5.75



[Raspberry Baseball Cap](#)
\$22.50

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Raspberry Baseball Cap

112

Raspberry pigment dyed baseball cap.
Features Chi Omega embroidered in a
tan and blue chevron pattern.
Adjustable strap.
100% cotton.

\$22.50I want: [Add to Shopping Bag](#)[Add to Wishlist](#)[Continue Shopping](#)[Checkout](#)[View Zoom](#)

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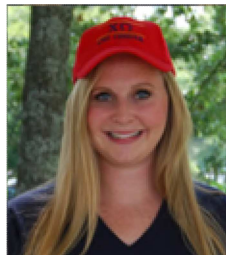
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[Wide Owl Cutout Lantern](#)
\$34.00



[Blue Owl Receiving Blanket](#)
\$28.00



[Red Bar Design Cap](#)
\$17.00

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Featured Product



Carnation Brooch
The carnation brooch is a beautiful accent to a blazer jacket or even winter coat. Sterling silver and cubic zirconia.

Products



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Like 6

Crown Pearl Badge J70130107

Available in Yellow Gold, White Gold & Sterling Silver. 1/2" X 1/2".

This product is not available to purchase online.

This item is available through your National Headquarters.

Product returns must be made within thirty (30) days of ship date for reasons unrelated to a quality defect or incorrect item. Products that are customarily stocked by Herff Jones and that are returned for reason(s) other than product quality are subject to a restocking fee of 25% of order value.

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Charms](#) » Eternity Necklace



Like 0

Eternity Necklace J70133883CZ OR RUBY

The eternity necklace is a fashion must have! Your choice of *rubies or cz's mounted into a polished circular charm with Chi Omega Greek letters engraved delicately. The charm hangs like a slide on an 18" snake chain. *Colored stones are synthetic.

Select Metal Quality:

Select Stone Selection:

ADD TO CART

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Charms](#) » Vertical Letters Lavalier



Like 1

Vertical Letters Lavalier L2647CHOM

The most popular lavalier in our line. This traditional lavalier or "drop" featuring Chi Omega Greek letters is oriented vertically as a pendant. Finely polished 1/2"L.

Select Metal Quality:

ADD TO CART

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[Catalog](#) » [Chi Omega](#) » [Charms](#) » Staggered Letter Lavalier



Like 0

Staggered Letter Lavalier L2646CHOM

5/16" H. and 1/2" W.

Select Metal Quality:

ADD TO CART

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Rings](#) » Scallop Border Ring



Like 0

Scallop Border Ring J7013R70130932

Perfect ring for an understated fashionable look. The Scallop Border Ring is detailed with a intricate border and has the Chi Omega Greek letters engraved on the center base.

Select Ring Size:

Select Metal Quality:

ADD TO CART

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Rings](#) » Whimsical Ring with CZ and pearl accents



Like 0

Whimsical Ring with CZ and pearl accents R70138337

Band measures 3/8" wide.

Select Material:

Select Ring Size:

ADD TO CART

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Rings](#) » Swirl Ring with 4 Rubies



Like 0

Swirl Ring with 4 Rubies R70131005

Ring measures 1/4" across Greek letters and stones.

Select Material:

Select Size:

ADD TO CART

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Rings](#) » Narrow Band Incised Letter Ring



Like 0

Narrow Band Incised Letter Ring R70139119

Band is 1/8"w.

Select Ring Size:

Select Metal Quality:

ADD TO CART

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Necklaces](#) » Horizontal Letter Festoon Necklace



Like 0

Horizontal Letter Festoon Necklace J70131025

Chain for 10KYG festoon is gold-filled.
Chain length 18". Chi Omega Greek letters measure approximately ½" wide and ¼" high.

Select Metal Quality:

ADD TO CART

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Applicant's Exhibit 6

DECLARATION OF DANIEL A. SHAVER

Comes the undersigned, Daniel A. Shaver, and understanding the statements in this Declaration to be under penalty of perjury, he hereby submits the following:

1. I have been employed since 1994 in the field of administering licensing programs through which collegiate fraternal organizations authorize approved vendors to market merchandise bearing the trademarks of the organizations, including the names, Greek letters and insignia of the fraternal organizations.
2. Since 1997 I have been employed fulltime as the President of Affinity Marketing Consultants, Inc. ("Affinity"), a company that administers marketing and licensing programs for leading Greek organizations throughout North America. In that capacity, I am responsible for the receipt and approval, or rejection of applications of merchandise vendors for permission to utilize the trademarks of the Greek organizations in association with a broad assortment of merchandising activities. Affinity is the worldwide leader in the administration of Greek organization licensing programs.
3. Affinity currently represents ninety-four fraternities and sororities, including Alpha Chi Omega, Alpha Omega Epsilon, Alpha Phi Omega, Alpha Tau Omega, Chi Omega, and Gamma Alpha Omega.
4. Affinity's clients represent a collective market of more than 600,000 students and over 7 million alumni members throughout North America.
5. As President of Affinity, I oversee the use and licensing of the trademarks of the Greek organizations Affinity represents, including the use of the Greek names, the Greek alphabet letters, and any other insignia affiliated with the Greek organizations, on merchandise.
6. I have custody and control of all license agreements and business records that

pertain to the use of the trademarks of the Greek organizations Affinity represents on merchandise.

7. We assist all of the clients we represent in licensing vendors of merchandise bearing the insignia of the sorority or fraternity to be acquired by members of those organizations to publicly indicate their membership in, and display their affinity for their respective fraternity or sorority. This merchandise includes a wide variety of items such as jewelry, clothing, banners, flags, decals, stationary, clocks, mugs, water bottles, aprons, backpacks, lamps, magnets, collectables, towels, stuffed animals, candles, board games, and bags.

9. The leading categories of fraternity and sorority merchandise bearing the insignia of the Greek organizations are jewelry and clothing.

10. The first item of fraternity or sorority merchandise that a member of a Greek organization usually receives is a member pin bearing either the name of the fraternity or sorority or the Greek letters of the fraternity or sorority to which the member belongs. Photographs showing examples these member pins attached hereto and incorporated herein by reference.

11. Since prior to my involvement with the merchandising of fraternity and sorority membership insignia, there has been a well-developed niche market for Greek letter organization affinity merchandise which is most commonly produced, marketed, and sold by licensed vendors who specialize in the production, marketing, and sale of merchandise for Greek organizations including vendors such as sassysorority.com, kollegetown.com, A Greek Concept, American Greek Co., getsomegreek.com, gonegreek.com, greekandunique.net, greekcreations.com, greekgallery.net, greekt-shirtsthatrock.com, greekyearbook.com, greekgear.com, greek101.com, greekwithenvy.com,

Jul 25 2014 14:24:47 15027798273


->

801 933 2248 Stites and Harbison Page 038

greekstreak.com, greekspirit.org, and greekshirtstore.com. Screenshots from the websites of some of these licensed vendors are attached hereto and are incorporated herein by reference.

12. Aside from being sold online through websites maintained by licensed vendors, Greek merchandise is commonly sold online through the websites of the Greek organizations, through college bookstores, through Greek merchandise shops located geographically near colleges and universities, and through direct mailings to members and alumnae of the Greek organizations.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment hereby declares that all statements made above in this document are based on my own personal knowledge and are understood to be true and correct to the best of my knowledge and belief.


Daniel A. Shaver

Date: 7/25/14



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Online Store

Catalog

Please click on your organization(s) of choice to view jewelry products on-line and start shopping!

Acacia	Delta Theta Tau	Phi Sigma Pi
Accessory Collection	Delta Upsilon	Phi Sigma Rho
Alpha Chi Omega	Delta Zeta	Phi Sigma Sigma
Alpha Chi Rho	Eta Kappa Nu	Philaethean
Alpha Chi Sigma	Gamma Phi Beta	Pi Beta Phi
Alpha Delta Pi Jewelry	Gamma Phi Delta	Pi Kappa Alpha
Alpha Epsilon Phi	Gamma Sigma Epsilon	Pi Kappa Phi
Alpha Epsilon Pi	Gamma Theta Upsilon	Pi Lambda Phi
Alpha Epsilon Pi Centennial Collection	Iota Phi Theta Fraternity, Inc.	Pi Sigma Epsilon
Alpha Gamma Rho	Kappa Alpha Order	Psi Beta
Alpha Gamma Delta	Kappa Alpha Psi Fraternity, Inc.	Psi Upsilon
Alpha Gamma Sigma	Kappa Alpha Theta Accessory Jewelry	Rho Lambda
Alpha Kappa Alpha	Kappa Delta	Sigma Alpha Agricultural
Alpha Kappa Divah	Kappa Delta Chi	Sigma Alpha Epsilon
Alpha Kappa Lambda	Kappa Delta Epsilon	Sigma Alpha Iota
Alpha Kappa Psi	Kappa Delta Phi	Sigma Alpha Mu
Alpha Omega	Kappa Delta Phi National Sorority	Sigma Alpha Sorority
Alpha Omega Epsilon	Kappa Delta Pi	Sigma Beta
Alpha Omicron Pi	Kappa Delta Rho	Sigma Chi
Alpha Phi	Kappa Kappa Gamma	Sigma Delta Tau
Alpha Phi Alpha	Kappa Kappa Sigma	Sigma Gamma Rho
Alpha Phi Delta	Kappa Phi	Sigma Lambda Beta
Alpha Phi Omega	Kappa Psi	Sigma Kappa
Alpha Rho Chi	Kappa Sigma	Sigma Lambda Gamma
Alpha Pi Phi	Lambda Chi Alpha	Sigma Nu
Alpha Psi Lambda	Lambda Chi Omega	Sigma Phi Epsilon
Alpha Sigma Alpha	Lambda Kappa Sigma	Sigma Phi Gamma
Alpha Sigma Phi	Lambda Tau Upsilon	Sigma Pi
Alpha Sigma Tau	Mu Phi Epsilon	Sigma Sigma Sigma
Alpha Tau Omega	Omega Tau Sigma	Sigma Theta Tau

<u>Alpha Xi Delta</u>	<u>Omicron Delta Kappa</u>	<u>Sigma Xi</u>
<u>Beta Gamma Sigma</u>	<u>Omicron Delta Kappa Centennial Collection</u>	<u>Tau Delta Phi</u>
<u>Beta Sigma Chi</u>	<u>P.E.O.</u>	<u>Tau Epsilon Phi</u>
<u>Beta Theta Pi</u>	<u>Phi Alpha Delta</u>	<u>Tau Kappa Epsilon</u>
<u>Chi Omega</u>	<u>Phi Beta</u>	<u>Theta Chi</u>
<u>Chi Phi</u>	<u>Phi Beta Chi</u>	<u>Tau Sigma Delta</u>
<u>Chi Psi</u>	<u>Phi Beta Psi</u>	<u>Theta Phi Alpha</u>
<u>Chi Sigma Iota</u>	<u>Phi Chi</u>	<u>Theta Tau Fraternity</u>
<u>Delta Chi</u>	<u>Phi Chi Theta</u>	<u>Theta Xi</u>
<u>Delta Delta Delta</u>	<u>Phi Delta Chi</u>	<u>Triangle Fraternity</u>
<u>Delta Gamma Accessory Jewelry</u>	<u>Phi Delta Theta</u>	<u>Zeta Beta Tau</u>
<u>Delta Mu Delta</u>	<u>Phi Eta Sigma</u>	<u>Zeta Phi Beta</u>
<u>Delta Kappa Epsilon</u>	<u>Phi Gamma Delta</u>	<u>Zeta Psi</u>
<u>Delta Omega</u>	<u>Phi Iota Alpha</u>	<u>Zeta Tau Alpha</u>
<u>Delta Omicron</u>	<u>Phi Kappa Psi</u>	<u>Delta Phi Epsilon Alumnae</u>
<u>Delta Phi Epsilon</u>	<u>Phi Kappa Sigma</u>	<u>Gamma Phi Beta Volunteer</u>
<u>Delta Phi Mu</u>	<u>Phi Kappa Tau</u>	<u>Gamma Phi Beta Alumna</u>
<u>Delta Sigma Phi</u>	<u>Phi Kappa Theta</u>	<u>Test Org</u>
<u>Delta Sigma Pi</u>	<u>Phi Lambda Chi</u>	
<u>Delta Tau Delta</u>	<u>Phi Mu</u>	
<u>Delta Theta Phi</u>	<u>Phi Mu Alpha Sinfonia</u>	
<u>Delta Theta Sigma</u>	<u>Phi Sigma Kappa</u>	



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Featured Product



Carnation Brooch

The carnation brooch is a beautiful accent to a blazer jacket or even winter coat. Sterling silver and cubic zirconia.

Products



Accessories



Badges & Pins



Bracelets



Earrings & Necklaces



Guards



Lavalieres & Charms



Milestone Pieces



Officer Dangles



Rings



Watches

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Products



Crown Diamond
Badge



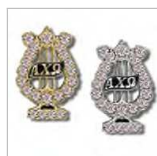
House Corp
Button



Crown Pearl
Vintage Badge



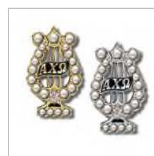
Sisterhood
Button



Crown Diamond
Vintage Badge



Crown Pearl
Vintage Badge
with 3 diamonds



Crown Pearl
Vintage Badge
with 1 Diamond



White Gold
Crown Pearl
Badge



Crown Pearl
Badge with 2
Diamonds



Crown Pearl
Badge with 1
Diamond



Crown Pearl
Badge with 3
Diamonds



Crown Pearl
Badge



Chased Badge
with 3 Pearls



Lyre Brooch



Mother's
Sweetheart
Barpin w/Lyre
Bird

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AMC005



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Alpha Chi Omega Online Store

[Catalog](#) » [Alpha Chi Omega](#) » [Badges & Pins](#) » Crown Diamond Badge



Like 1

Crown Diamond Badge J70010106

This product is not available to purchase online.

This item may only be ordered through your National Headquarters. To reach your headquarters dial 317-579-5050.

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Alpha Omega Epsilon Online Store

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Featured Product

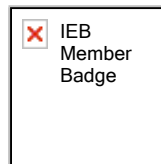


Pearl Drop Earrings
Mixing a classic design with a fashion flare the fish hook pearl earrings are a must have this season! Sterling silver. 5/8" wide by 7/8" long.

Products



Accessories



Badges & Guards



Bracelets



Chapter Guards



Dangles



Lavalieres & Charms



Pins & Buttons



Rings



President Committees



Vice President
Committees



Treasurer
Committees



Secretary
Committees



Interchapter
Relations
Committees



Director of
Publications
Committees



Alumnae
Relations Officer
Committees



Director of
Expansion
Committees



Chapter
Committees



Foundation



Necklaces

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Alpha Omega Epsilon Online Store

[Catalog](#) » [Alpha Omega Epsilon](#) » [Badges & Guards](#) » Chased Border Badge



Like 0

Chased Border Badge J70390102

3/4" W x 5/16" H

Select Material:

ADD TO CART

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Alpha Omega Epsilon Online Store

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Like 3

Plain Badge J70390100

3/4" W x 5/16" H

Select Material:

ADD TO CART

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Featured Product



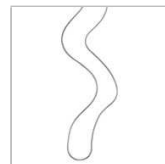
Traditional Lavalier

The most popular lavalier in our line. The traditional lavalier or "drop" featuring Alpha Omega Greek letters is oriented vertically as a pendant. Finely polished on all surfaces. (Chain sold separately.) 7/16" L.

Products



Lavaliere



Necklaces



Official Jewelry

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Alpha Omega Online Store

[Catalog](#) » [Alpha Omega](#) » [Lavalieres](#) » Traditional Lavalier



Like 0

Traditional Lavalier L2647ALOM

The most popular lavalier in our line. The traditional lavalier or "drop" featuring Alpha Omega Greek letters is oriented vertically as a pendant. Finely polished on all surfaces. (Chain sold separately.) 7/16" L.

Select Metal Quality:

ADD TO CART

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Featured Product



Pocketknife
Sterling Silver

Products



Accessories



Guards



Official Jewelry



Officer Dangles



Charms



Lapel /
Recognition
Pins



Earrings &
Necklaces



Bracelets



Rings - Group
One



Rings - Group
Two



Cufflinks

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Products



Sweetheart
Badge



Crown Pearl
Badge



Plain Badge

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Alpha Phi Omega Online Store

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Like 2

Sweetheart Badge 0101

Select Metal Quality:

ADD TO CART

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Alpha Phi Omega Online Store

[Catalog](#) » [Alpha Phi Omega](#) » [Official Jewelry](#) » Plain Badge



Like 0

Plain Badge J71040100

5/8" h X 3/4" w.

This product is not available to purchase online.

This item is available for purchase at the Alpha Phi Omega online store.

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Alpha Tau Omega Online Store

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Featured Product



Tie Bar
Tie bar mounted with Alpha Tau Omega enameled crest in Gold Filled. 2" x 1/4"

Products



Accessories



Sweetheart Jewelry / Gifts



Official Badges



Chapter Guards



Cufflinks



Officer Dangles



Lavalieres & Pendants



Money Clip



Lapel / Recognition Pins



Rings

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Products



Small Plain
Badge



Miniature Plain
Sweetheart Pin



Initiate Badge,
10K



Glazebrook
Badge



Crown Diamond
and Sapphire
Badge



Crown Sapphire
Badge with
Diamond
Additives



Crown Pearl and
*Sapphire
Sweetheart Pin



Crown Pearl
Sweetheart Pin



Crown Pearl
Badge



Crown Pearl
Badge w/
*Sapphire Points



Crown Pearl
Badge w/ *Ruby
Points

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Like 2

Initiate Badge, 10K J00950010

This product is not available to purchase online.

PLEASE CONTACT ALPHA TAU
OMEGA HEADQUARTERS TO
PURCHASE THIS ITEM. 800-798-9286

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[Catalog](#) » [Alpha Tau Omega](#) » [Official Badges](#) » Glazebrook Badge



Like 0

Glazebrook Badge J00950808

Select Metal Quality:

ADD TO CART

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Featured Product



Carnation Brooch
The carnation brooch is a beautiful accent to a blazer jacket or even winter coat. Sterling silver and cubic zirconia.

Products



Pins



Accessories



Badges & Guards



Bracelets



Charms



Earrings



Necklaces



Rings



Dangles

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Products



Crown Diamond
Badge



Crown Pearl
Badge



Crown Pearl
Double Letter
Guard



Plain Single
Letter Guard



Plain Double
Letter Guard



Crown Pearl
Single Letter
Guard

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[Catalog](#) » [Chi Omega](#) » [Badges & Guards](#) » Crown Diamond Badge



Like 1

Crown Diamond Badge J70130106

1/2" X 1/2".

This product is not available to purchase online.

Badge purchases must be made through Chi Omega Fraternity.

Product returns must be made within thirty (30) days of ship date for reasons unrelated to a quality defect or incorrect item. Products that are customarily stocked by Herff Jones and that are returned for reason(s) other than product quality are subject to a restocking fee of 25% of order value.

Custom-made products are not returnable; this includes all rings and any other non-stock jewelry items. Customer is responsible for any postal or shipping charges incurred in returning the product to the Greek Division of Herff Jones

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Badges & Guards](#) » Crown Pearl Badge



Like 6

Crown Pearl Badge J70130107

Available in Yellow Gold, White Gold & Sterling Silver. 1/2" X 1/2".

This product is not available to purchase online.

This item is available through your National Headquarters.

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GO

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Featured Product



Standard Keypin, GE
Pin back. Measures approximately
1 3/4" h x 3/4" w.

Products



Charms & Pins



Accessories

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Delta Omega Online Store

[Catalog](#) » [Delta Omega](#) » [Charms & Pins](#) » Standard Key (charm), GE



Like 0

Standard Key (charm), GE J02275010

Measures approximately 1 3/4" h. x 3/4 w.

Price: \$27.50

ADD TO CART

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Omega Tau Sigma Online Store

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Featured Product



Pledge Button
Measures approximately 3/8".

Products



Badges



Charms



Guards



Dangles



Lavalieres &
Buttons

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Omega Tau Sigma Online Store

[Catalog](#) » [Omega Tau Sigma](#) » [Badges](#) » Crown Pearl Badge w/ 4 Ruby Points



Like 0

Crown Pearl Badge w/ 4 Ruby Points J71140112

Measures approximately 3/4". Ruby stones are synthetic

Select Metal Quality:

ADD TO CART

Product returns must be made within thirty (30) days of ship date for reasons unrelated to a quality defect or incorrect item. Products that are customarily stocked by Herff Jones and that are returned for reason(s) other than product quality are subject to a restocking fee of 25% of order value.

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Omega Tau Sigma Online Store

[Catalog](#) » [Omega Tau Sigma](#) » [Badges](#) » Plain Badge



Like 0

Plain Badge

J71140110

Measures approximately 3/4"

Select Metal Quality:

ADD TO CART

Product returns must be made within thirty (30) days of ship date for reasons unrelated to a quality defect or incorrect item. Products that are customarily stocked by Herff Jones and that are returned for reason(s) other than product quality are subject to a restocking fee of 25% of order value.

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Omega Tau Sigma Online Store

[Catalog](#) » [Omega Tau Sigma](#) » [Badges](#) » Crown Pearl Badge



Like 0

Crown Pearl Badge J71140111

Measures approximately 3/4". Synthetic sapphire and ruby

Select Metal Quality:

ADD TO CART

Product returns must be made within thirty (30) days of ship date for reasons unrelated to a quality defect or incorrect item. Products that are customarily stocked by Herff Jones and that are returned for reason(s) other than product quality are subject to a restocking fee of 25% of order value.

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Applicant's Exhibit 7

STITES & HARRIS, P.L.L.C.

ATTORNEYS

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Suite 1800
Louisville, KY 40202-3352
(502) 587-3400
(502) 587-6391 Fax
www.stites.com

December 27, 2010

Jack A. Wheat
(502) 681-0323
(502) 779-8273 FAX
jwheat@stites.com

Jess M. Collen
Oren Gelber
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Ave
Ossining, NY 10562

RE: Alpha Phi Omega/Omega SA Oppositions
C/M Code: AL169/00AL1

Dear Mr. Collen and Ms. Gelber:

Enclosed you will find Alpha Phi Omega's Answers to your client's, Omega SA, Notices of Opposition, specifically Opposition Nos. 91197504 and 91197505.

Our client, Alpha Phi Omega, is a Greek letter collegiate fraternal organization. We do not believe the Oppositions are necessary, and we are hopeful that when you consider the market realities you will agree that the use by Alpha Phi Omega of its insignia on fraternal merchandise does not present any dilution of or likelihood of confusion with your client's trademarks.

We assume you understand that there are numerous Greek letter collegiate fraternal organizations, and that each one typically uses a combination of two to three Greek alphabet letters as its name. Many of these utilize the Greek alphabet letter "Omega" in their name. Perhaps you were unaware that there is a well-established niche market through which Greek letter collegiate fraternal organizations make available for purchase by their members various affinity products, including clothing, badges, jewelry and so forth containing their Greek names and letters, including various of those organizations that use the Greek alphabet letter "Omega" in their name.

Our brief research reveals an extensive amount of third-party use of the Greek letter "Omega" by Greek organizations. For example, the website of just one Greek jewelry vendor, <http://www.higreek.com/index.cfm?event=Products.showOrganizations>, displays jewelry for six Greek organizations which include the word "Omega," namely, Alpha Chi Omega, Alpha Omega Epsilon, Alpha Phi Omega, Alpha Tau Omega, Chi Omega and Omega Tau Sigma. Printouts for each of these organizations prominently displaying clothing and jewelry with the word "Omega" are enclosed for your review. It is worth noting that at least two of these, Alpha Chi Omega and Alpha Tau Omega, founded respectively in 1885 and 1865, predate your client. Further, a simple online Google search reveals an additional *four* Greek organizations which

DEFENDANT'S
EXHIBIT

5

By: [Signature] 11/15/11

Alexandria, VA Atlanta, GA Frankfort, KY Franklin, TN Jeffersonville, IN Lexington, KY Louisville, KY Nashville, TN

Jess M. Collen
December 27, 2010
Page 2

include the word "Omega," namely, Omega Psi Phi, Alpha Omega Theta, Alpha Nu Omega and Gamma Phi Omega. Enclosures demonstrating advertisement of clothing and jewelry bearing these organizations' names are also attached for your review. Given the widespread use within the Greek community of the Greek letter "Omega" in connection with clothing and jewelry, we hope you will agree that the pending oppositions are not good candidates for successful dilution claims.

Further, Greek merchandise is purchased by sophisticated consumers in a very narrow niche channel of trade, namely, channels of trade featuring fraternity and sorority merchandise, markets uniquely directed to members of collegiate fraternities and sororities, and tightly controlled by a licensing official (Affinity Marketing Consultants, *see* <http://www.greeklicensing.com/about.asp>).

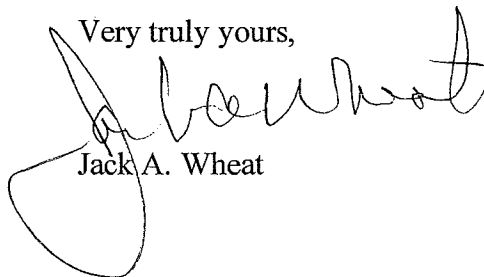
The target customers for Alpha Phi Omega merchandise, namely members of Alpha Phi Omega, are not at all likely to assume that clothing or jewelry bearing their organization's name or insignia is affiliated with your client. Joining a fraternity or sorority is not an impulsive spur of the moment decision. To join a collegiate fraternal organizations like Alpha Phi Omega, an individual must first identify the organization and express his or her interest therein. Then, the organizations must invite the individual to join. Finally, the individual is initiated into the organization and is required to fulfill certain obligations to maintain his or her membership status. These obligations often include paying dues and participating in events. Clearly, this process, and a member's continuing involvement in the organization, makes that member a sophisticated purchaser. Therefore, both the intimate familiarity created through membership and the narrow and tightly controlled channels of trade serve to preclude any confusion between Alpha Phi Omega and your client.

The simple solution is to amend our client's recitation of goods to note that the goods are "purchased by and for members of the Alpha Phi Omega collegiate fraternity through authorized vendors featuring fraternity and sorority affinity merchandise." We are willing to propose this solution to our client if you think it is workable.

We look forward to hearing from you.

Jess M. Collen
December 27, 2010
Page 3

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack A. Wheat". The signature is fluid and cursive, with a large loop at the end of the last name.

Jack A. Wheat

cc: Alpha Phi Omega (w/encls.)

AL169:00AL1:815483:1:LOUISVILLE

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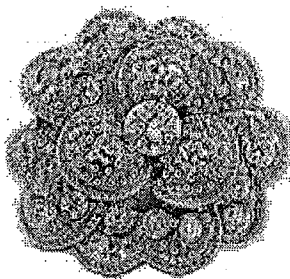
Alpha Chi Omega Online Store

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Products:[Go](#)[Catalog](#) » Alpha Chi Omega

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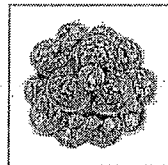


Featured Product

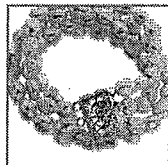


Carnation Brooch
Sterling silver and cubic zirconia.

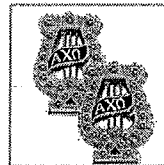
Products



Accessories



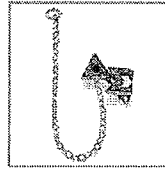
Bracelets



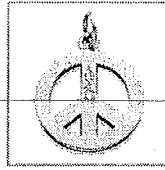
Badges & Pins



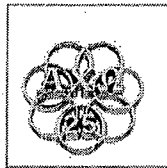
Earrings &
Necklaces



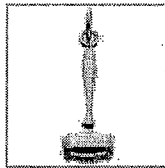
Guards



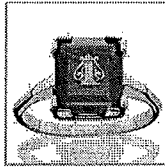
Lavalieres &
Charms



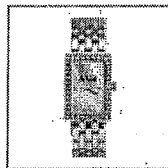
Milestone
Pieces



Officer Dangles



Rings



Watches

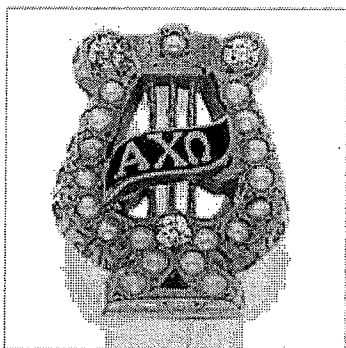
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Alpha Chi Omega Online Store

[Catalog](#) » [Alpha Chi Omega](#) » [Badges & Pins](#) » Crown Pearl Badge with 3 Diamonds



Crown Pearl Badge with 3 Diamonds J70010117

5/8" h. x 1/2" w.

This product is not available to purchase online.

This item must be ordered through your National Headquarters. Please contact them at 317.579.5050.

Product returns must be made within thirty (30) days of ship date for reasons unrelated to a quality defect or incorrect item. Products that are customarily stocked by Herff Jones and that are returned for reason(s) other than product quality are subject to a restocking fee of 25% of order value.

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Keywords or Item #s

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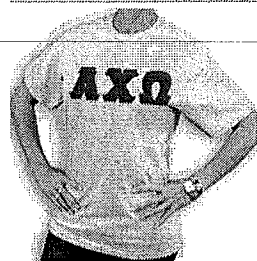
FAST SHIP GUARANTEE
CLICK HERE

-Select Sorority-

-Select Fraternity-

HOME : ALPHA CHI OMEGA MERCHANDISE & GIFTS : ALPHA CHI OMEGA LETTERED SHIRTS

IMAGE VIEW



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Alpha Chi Omega Lettered Shirts

IHO-Alpha IHO-Chi Omega Lettered Shirts

[Rate and Review this Item](#)Our Price: **\$21.95**

As Low As: \$13.50

Apparel:

Size

Apparel Color:

Choose

Foreground Letters:

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Background Letters:

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None

Production Time:

Produced in 5 working days(+10.00)

Quantity:

1

SEE IT BEFORE YOU BUY! [CLICK HERE](#)**ADD TO CART**Save 20% Now!
Coupon "Save20Now"

QUANTITY DISCOUNTS AVAILABLE!

1 - 4	5 - 11	12 - 23	24 - 47	48 - 59	60 - 97	98 +
\$21.95 ea.	\$19.95 ea.	\$17.50 ea.	\$17.00 ea.	\$16.00 ea.	\$15.00 ea.	\$13.50 ea.

ITEM DESCRIPTION

CUSTOMER REVIEWS

SIZING & COLOR INFO

The "Classic" Alpha Delta Pi sorority lettered T-Shirt. This Greek Tee is a must for every Alpha Delta Pi on campus! 100% heavyweight cotton T-shirts. Our T-Shirts are "unisex" - Geared more towards men so order size accordingly. [View Color Swatches](#)

[View new patterned twill](#)[Production Times And Policies](#)

GREEK GEAR RECOMMENDS



Alpha Chi Omega Afghan

Blanket Throw

Reg. Price: \$53.95

Sale Price: \$49.95

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Alpha Chi Omega

Sweatshirt Hoodie

As Low As: \$37.00

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Email Address

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Great info on designing
perfect sweatshirts to super
Greek fundraising ideas.

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SAVE**

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GLASSWARE, PADDLES
& MORE!

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REPS**
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Marketing Skills.
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Become a part of our affiliate
program to help market Greek Gear and
your company in a positive way.
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Graphic
Tees!

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Alpha Chi Omega Lettered
Shirts

As Low As: \$13.50

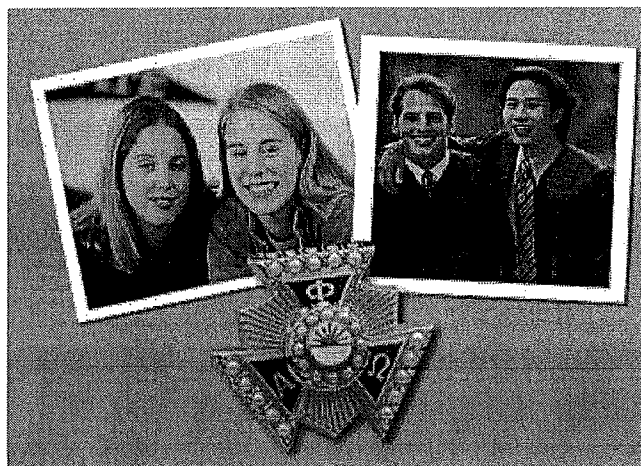
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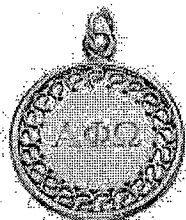
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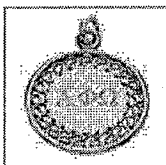


Featured Product

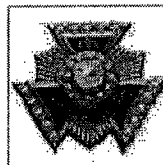


Small Round Filigree Charm with
Engraving
3/4" Diameter.

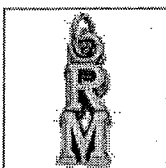
Products



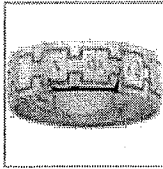
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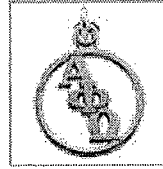
Official Jewelry



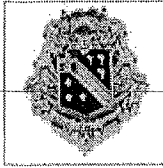
Officer Dangles



Rings



Charms



Lapel /
Recognition
Pins

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Alpha Phi Omega Online Store

[Catalog](#) » [Alpha Phi Omega](#) » [Accessories](#) » Small Round Filigree Charm with Engraving



Small Round Filigree Charm with Engraving J71040419E

3/4" Diameter.

Select Material:

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Keywords or Item #s

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DESIGN YOUR OWN GREEK GEAR

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CLICK HERE

--Select Sorority--

--Select Fraternity--

HOME : SHOP BY FRATERNITY : ALPHA PHI OMEGA MERCHANDISE & GIFTS : ALPHA PHI OMEGA LINE HAT

IMAGE VIEW



CLICK TO ENLARGE

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ADD TO FAVORITES

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\$18.95 ea.	\$17.00 ea.	\$13.00 ea.	\$12.00 ea.	\$10.00 ea.

Alpha Phi Omega Line Hat

IHO-Alpha Phi Omega Line Hat

Rate and Review this Item

Our Price: \$18.95

As Low As: \$10.00

Hat Color:

Choose

Line Color:

Choose

Text Color:

Choose

Text Below Bar:

Production Time:

Produced in 1 working Day (+10.00)

Quantity:

1



ADD TO CART

Save 20% Now!
Coupon "Save20Now"

ITEM DESCRIPTION

CUSTOMER REVIEWS

SIZING & COLOR INFO

GREEK GEAR RECOMMENDS

Now you can customize your own Alpha Phi Omega fraternity hats! These Alpha Phi Omega fraternity hats are the best quality, low profile hats available! They are made from durable 100% cotton with a low profile, comfortable fit and adjustable closing band! Order more and save!

[View Thread Colors](#)Get optional embroidery on back by [clicking here!](#)[Click here to see other Alpha Phi Omega hats & Caps](#)[Production Times And Policies](#)

Alpha Phi Omega Afghan
Blanket Throw
Reg. Price: \$53.95
Sale Price: \$49.95

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Alpha Phi Omega
Our Price: \$28.95

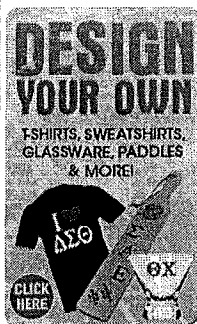
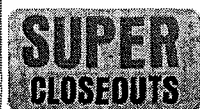
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Alpha Phi Omega Line Hat
As Low As: \$10.00

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Email Address

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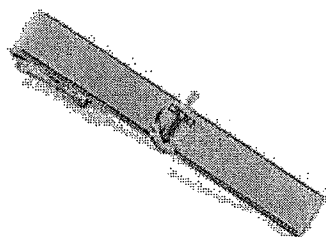
Alpha Tau Omega Online Store

Search Alpha Tau Omega
Products: [Catalog](#) » Alpha Tau Omega

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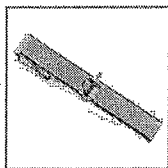


Featured Product

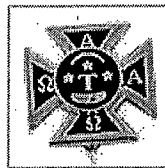


Tie Bar
Tie bar mounted with Alpha Tau
Omega enameled crest in Gold
Filled. 2" x 1/4"

Products



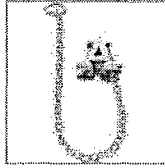
Accessories



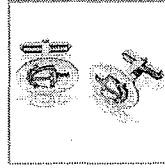
Sweetheart
Jewelry / Gifts



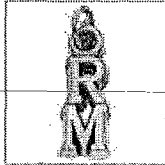
Official Badges



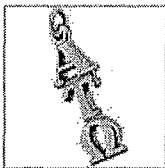
Chapter Guards



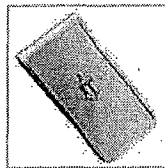
Cufflinks



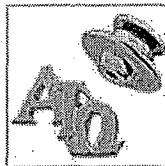
Officer Dangles



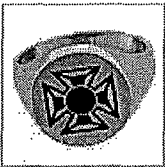
Lavalieres & Pendants



Money Clip



Lapel /
Recognition
Pins



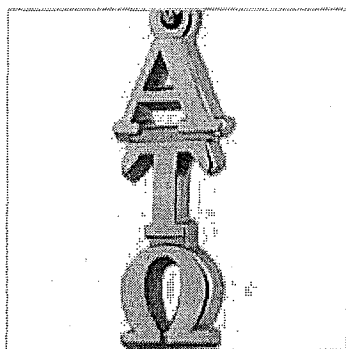
Rings

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Alpha Tau Omega Online Store

[Catalog](#) » [Alpha Tau Omega](#) » [Lavalieres & Pendants](#) » [Traditional Lavalier](#)



Traditional Lavalier L2647ALTAOM

The most popular lavalier in our line.
This traditional lavalier or "drop"
featuring ATO Greek letters is oriented
vertically as a pendant. Finely polished on
all surfaces. (Chain sold separately.) 3/4"
L.

Select Metal Quality:

[ADD TO CART](#)

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Keywords or Item #s

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--Select Sorority--

--Select Fraternity--

HOME: ALPHA TAU OMEGA MERCHANDISE & GIFTS: ALPHA TAU OMEGA CLOTHING: ALPHA TAU OMEGA LINE HAT

IMAGE VIEW



CLICK TO ENLARGE

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\$18.95 ea.	\$17.00 ea.	\$13.00 ea.	\$12.00 ea.	\$10.00 ea.

Alpha Tau Omega Line Hat

IHO-Alpha Tau Omega Line Hat

Rate and Review this Item

Our Price: \$18.95

As Low As: \$10.00

Hat Color:

Choose

Line Color:

Choose

Text Color:

Choose

Text Below Bar:

Production Time:

Produced in 1 working Day (+10.00)

Quantity:

1

ADD TO CART

 Save 20% Now!
 Coupon "Save20Now"

ITEM DESCRIPTION

CUSTOMER REVIEWS

SIZING & COLOR INFO

GREEK GEAR RECOMMENDS

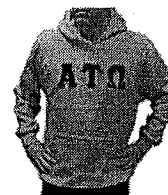
Now you can customize your own Alpha Tau Omega fraternity hats! These Alpha Tau Omega fraternity hats are the best quality, low profile hats available! They are made from durable 100% cotton with a low profile, comfortable fit and adjustable closing band! Order more and save!

View Thread Colors

Get optional embroidery on back by clicking here!

Click here to see other Alpha Tau Omega hats & Caps

Production Times And Policies



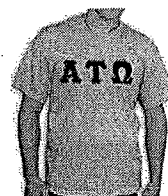
Alpha Tau Omega
Sweatshirts Hoodie
Reg. Price: \$58.95
Sale Price: \$53.95

VIEW DETAILS



Alpha Tau Omega Line Hat
As Low As: \$10.00

VIEW DETAILS



Alpha Tau Omega Lettered
T-Shirt
As Low As: \$13.50

Email Address

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perfect sweatshirts to super
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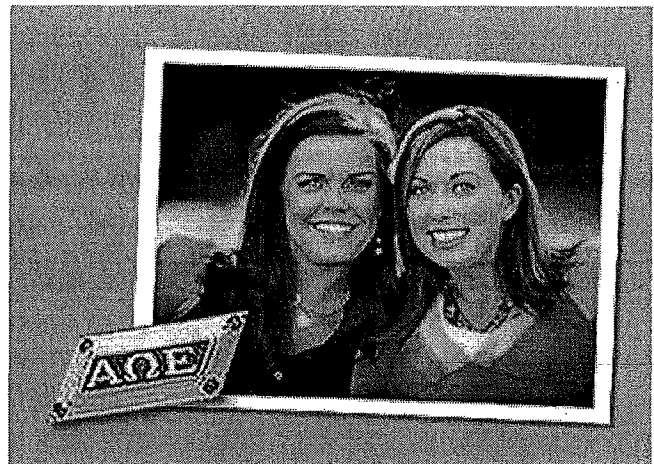
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Alpha Omega Epsilon Online Store

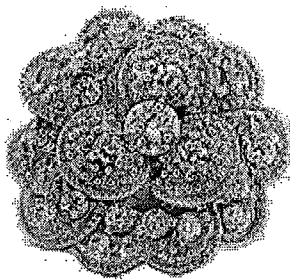
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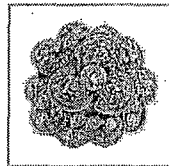


Featured Product

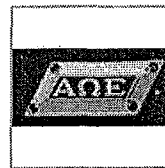


Carnation Brooch
Sterling silver and cubic zirconia.

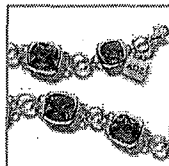
Products



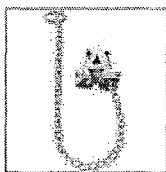
Accessories



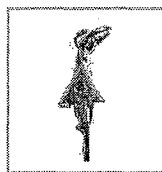
Badges & Guards



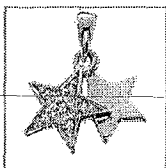
Bracelets



Chapter Guards



Dangles



Lavalieres &
Charms



Pins & Buttons



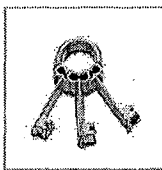
Rings



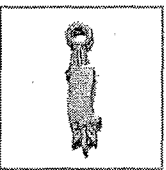
President
Committees



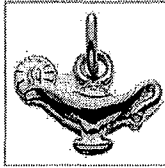
Vice President
Committees



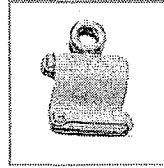
Treasurer
Committees



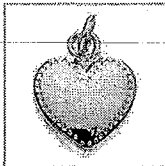
Secretary
Committees



Interchapter
Relations
Committees



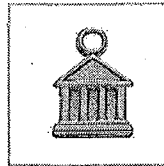
Director of
Publications
Committees



Alumnae
Relations Officer
Committees



Director of
Expansion
Committees



Chapter
Committees



Foundation



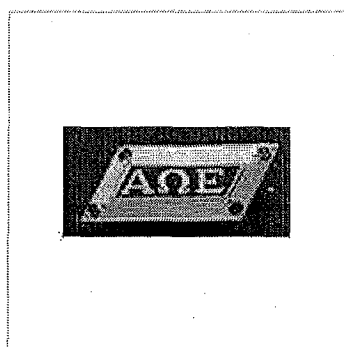
Necklaces

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Alpha Omega Epsilon Online Store

[Catalog](#) » [Alpha Omega Epsilon](#) » [Badges & Guards](#) » Plain Badge w/4 *Sapphires



Plain Badge w/4 *Sapphires J70390101

*Sapphires are synthetic. 3/4" W x 5/16"
H.

Select Material:

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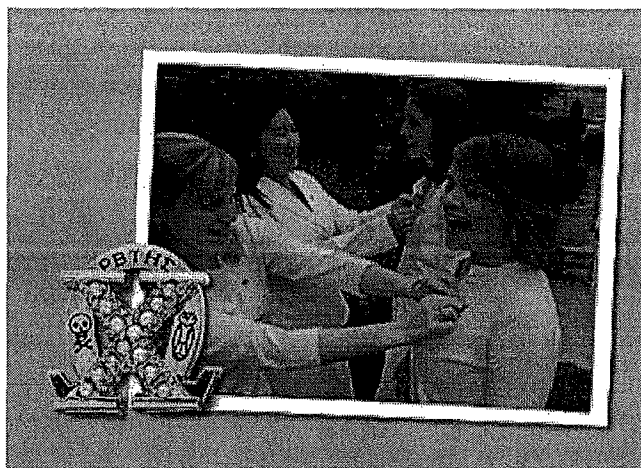
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Chi Omega Online Store

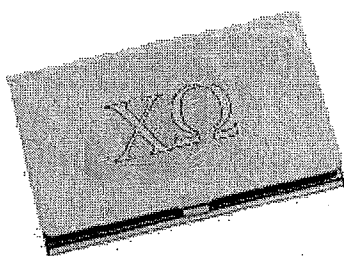
Search Chi Omega Products:

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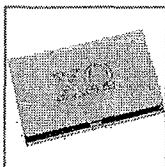


Featured Product



Business Card Case with Chi
Omega Engraved
2 1/2" X 3 5/8".

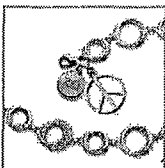
Products



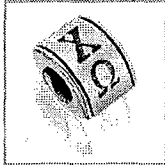
Accessories



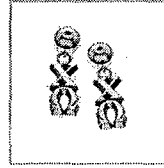
Badges &
Guards



Bracelets



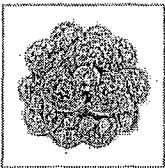
Charms



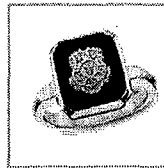
Earrings



Necklaces



Pins



Rings

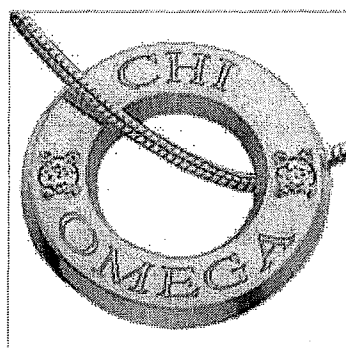


Dangles

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Chi Omega Online Store

[Catalog](#) » [Chi Omega](#) » [Charms](#) » Eternity Necklace

Eternity Necklace J70133883CZ OR RUBY

18" L. Chain. Your choice of rubies or
cz's. Colored stones are synthetic.

Select Metal Quality:

Select Stone Selection:

[ADD TO CART](#)

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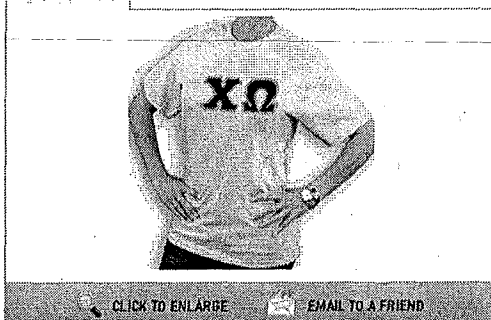
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--Select Fraternity--

HOME : CHI OMEGA MERCHANDISE & GIFTS : CHI OMEGA LETTERED SHIRTS

IMAGE VIEW



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Chi Omega Lettered Shirts

IHO-Chi Omega Lettered Shirts

★★★★★ (2 reviews)

Our Price: \$21.95

As Low As: \$13.50

Apparel:

Size

Apparel Color:

Choose

Foreground Letters:

Choose

Click Here to View

Background Letters:

None

Click Here to View

Production Time:

Produced in 5 working days(+10.00)

Quantity:

1

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QUANTITY DISCOUNTS AVAILABLE!

1 - 4	5 - 11	12 - 23	24 - 47	48 - 59	60 - 97	98 +
\$21.95 ea.	\$19.95 ea.	\$17.50 ea.	\$17.00 ea.	\$15.00 ea.	\$15.00 ea.	\$13.50 ea.

ITEM DESCRIPTION

CUSTOMER REVIEWS

SIZING & COLOR INFO

GREEK GEAR RECOMMENDS

The "Classic" Chi Omega sorority lettered T-Shirt. This Greek Tee is a must for every Chi Omega on campus! 100% heavyweight cotton T-shirts.. Our T-Shirts are "unisex" - Geared more towards men so order size accordingly. [View Color Swatches](#)

[View new patterned twill](#)

[Production Times And Policies](#)



Chi Omega T-Shirts & Tees

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Chi Omega Line Hat

Our Price: \$18.95

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Chi Omega Sweatshirts Hoodie

As Low As: \$37.00

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Email Address

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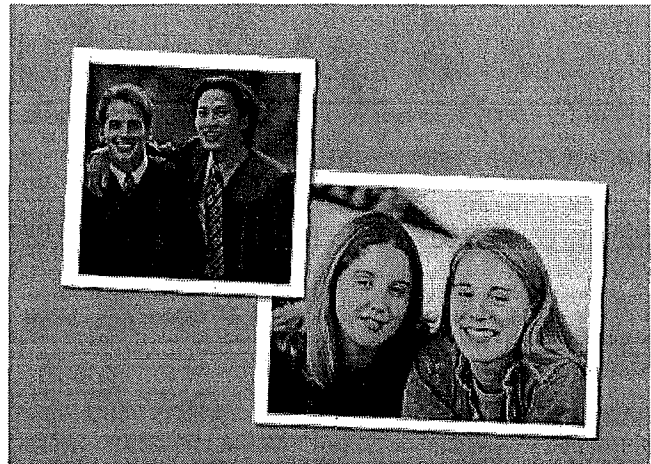
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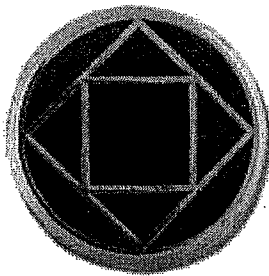
Omega Tau Sigma Online Store

Search Omega Tau Sigma
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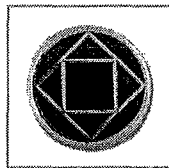


Featured Product

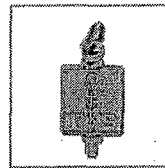


Pledge Button
Measures approximately 3/8".

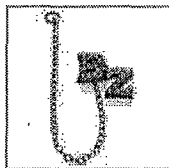
Products



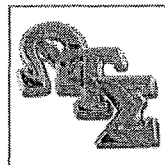
Badges



Charms



Guards



Dangles

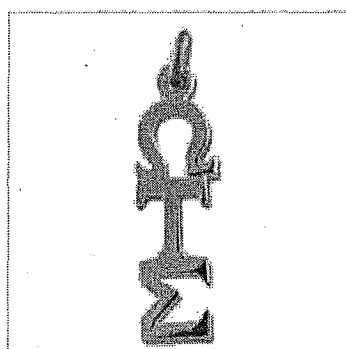
Lavalieres &
Buttons

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Omega Tau Sigma Online Store

[Catalog](#) » [Omega Tau Sigma](#) » [Lavalieres & Buttons](#) » Vertical Letter Lavalier



Vertical Letter Lavalier L2647OMTASI

Select Metal Quality:

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GreekForMe

Shop for Your Sorority
or Fraternity Merchandise



View Cart Items: 0 \$0.00

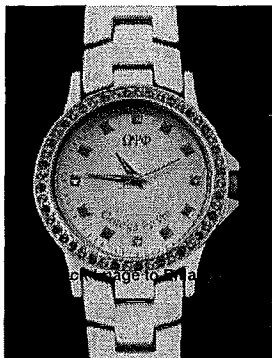
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search

You are Here > [Home](#) > [Black Greek Paraphernalia](#) > [Omega Psi Phi Merchandise](#) > [Omega Psi Phi Watch](#)

Omega Psi Phi Watch

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Omega Psi Phi Line Hat

IHO-Omega Psi Phi Line Hat-2

★★★★★ (1 review)

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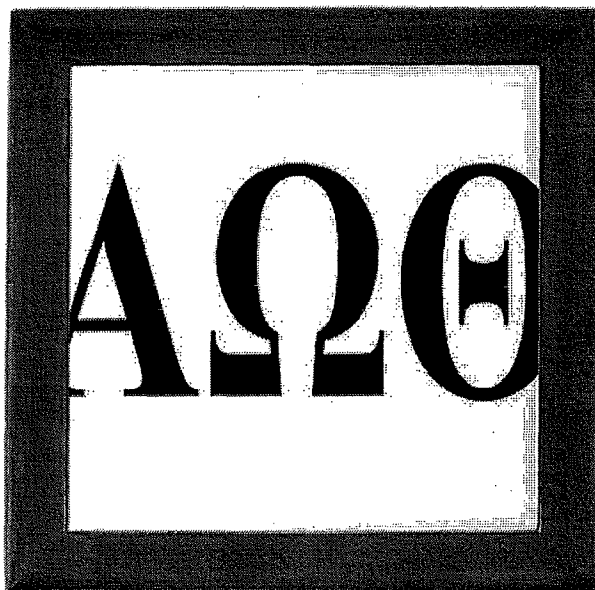
[CafePress](#) > [Keepsake Boxes](#) > ALPHA OMEGA THETA Tile Box**\$22.00 ALPHA OMEGA THETA Tile Box****Keepsake Box**

Perfect for stylishly storing jewelry and mementos, this hardwood box showcases a ceramic tile. Spring-loaded hinged lid stays open without tipping the box over and snaps closed securely.

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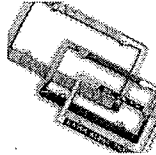
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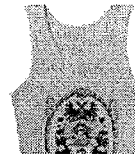
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Gamma Phi Omega Tees



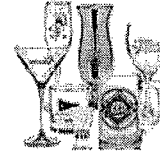
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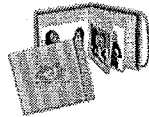
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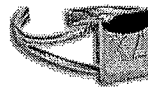
Gamma Phi Omega Sorority Gifts



Gamma Phi Omega Stuff



Gamma Phi Omega Sweatshirts



Gamma Phi Omega Toe Rings



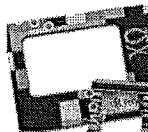
Gamma Phi Omega Towels



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Applicant's Exhibit 8

STITES & HARRISON PLLC

ATTORNEYS

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(502) 587-3400
(502) 587-6391 Fax
www.stites.com

May 5, 2011

Jack A. Wheat
(502) 681-0323
(502) 779-8273 FAX
jwheat@stites.com

Ms. Oren Gelber
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562

RE: Omega SA v. Alpha Phi Omega
Your Refs. : K654 and K655
C/M Code: AL169/00AL1

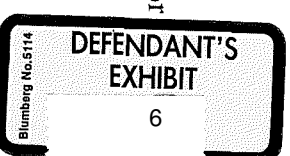
Dear Oren:

The Omega SA offer set forth in your letter of April 19, 2011 has been reviewed with our client. We understand the reference in your letter to application Serial No. 77/905,236 was in error. Although the request was that we withdraw that application for registration "in Class 14," as you realize, that application does not relate to Class 14. Thus we understand that this was actually intended to be a reference to application Serial No. 77/950,436, our pending application to register the Alpha Phi Omega coat-of-arms design as a trademark for jewelry in Class 14.

Although the proposal set forth in your letter is not quite acceptable, I believe we should be able to achieve a meaningful and fair resolution of this dispute.

The pending application of concern is not an application to register the Alpha Phi Omega coat-of-arms for clocks, watches, timepieces or any other horological or chronometric instruments, it is an application for registration for jewelry. If ever we do seek to register for any such devices, you would certainly right to oppose such an application, but here we are not dealing with such a product line.

Alpha Phi Omega has been in existence for over 85 years, since 1925. Jewelry bearing the Alpha Phi Omega name or Greek Alphabet letters has been produced for that entire time period. For however long Omega SA has been doing business in the United States markets, the parties have coexisted without any instances of confusion known to us. Are you aware of any? We expect there has been none. Considering that Alpha Phi Omega is a collegiate fraternal organization, just like numerous other collegiate Greek letter fraternities and sororities who utilize the Greek Alphabet letter "Omega" in their name, we would be quite surprised if anyone ever confuses Omega SA's commercial endeavors and products with fraternities and sororities or their Greek affinity merchandise.



Ms. Oren Gelber

May 5, 2011

Page 2

This firm and Alpha Phi Omega's merchandising company also represent the Alpha Tau Omega Fraternity, founded in 1865, and the Alpha Chi Omega Sorority, founded in 1885. Jewelry bearing both of these organizations names or Greek Alphabet letters has been produced for them ever since their founding dates, dates which predate any first use of the Omega SA marks anywhere, much less here in the states.

This firm and Alpha Phi Omega's merchandising company also represent the Chi Omega Sorority, founded in the spring of 1895 apparently about simultaneous with the first use of the Omega SA marks. Chi Omega is the largest collegiate sorority and like all fraternities and sororities, jewelry bearing it name or Greek Alphabet letters has been produced for it since its founding. See Trademark Registration No. 1,361,759.

Omega watches have coexisted with fraternity and sorority merchandise, including jewelry, bearing the word Omega or the Greek Alphabet letter, Ω , for over 100 years. We are unaware of even a single instance of confusion of a potential customer and doubt if there has been any.

Both the Courts and the PTO have held that uses of two and three Greek Alphabet letter combinations in a mark are recognized as references to collegiate fraternities and sororities, and in the channels of trade, the commonality of one or two Greek Alphabet letters does not cause confusion. For example, as recently noted by the United States District Court for the Northern District of Texas, "A member of Alpha Omicron Pi could certainly distinguish the mark of her organization from the mark of Alpha Delta Pi, despite the fact they both contain two of the same letters." *Abraham v. Alpha Chi Omega et al*, Civil Action No. 3:08-cv-570-F (Memorandum Opinion entered April 26, 2011 at pps. 23 & 24).

Omega SA has a likely insurmountable burden to overcome to prevail in these Oppositions. We doubt that Omega SA has considered the self-destructive, indeed suicidal consequences of prevailing in the unlikely event it could do so. To prevail, it must show that a two or three Greek letter combination containing the Greek Alphabet word "Omega" or letter, Ω is likely to be confused with Omega and its products. The consequence of prevailing is self-destructive. To prevail in this action would be binding and **usable against** Omega SA in any actions brought against Omega SA by any of our other fraternity and sorority clients with "Omega" in their name which were founded prior to Omega SA's expansion into the United States markets. Simply stated, if the name Alpha Phi Omega is likely to be confused with Omega SA and its products simply by virtue of the non-emphasized use of "Omega" in the name, then, as a matter of law, Omega SA and its products are likely to be confused with other of our clients including Alpha Tau Omega, founded in 1865, and Alpha Chi Omega, founded in 1885. Surely Omega SA does not wish to merely win this battle, but then lose the war when it is asked to account to fraternities and sororities with rights senior to Omega SA.

Ms. Oren Gelber

May 5, 2011

Page 3

As we assume you are aware, the Doctrine of Judicial Estoppel would prevent Omega SA from contending that one is an infringement, and then to turn about and argue the opposite in the other situation. As the United States Supreme Court notes, "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position. . . . The doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding." *State of New Hampshire v. State of Maine*, 532 U.S. 742, 749 (2001). "[J]udicial estoppel forbids use of 'intentional self-contradiction . . . as a means of obtaining unfair advantage.'" *Id.* at 751 (2001).

[I]ts purpose is 'to protect the integrity of the judicial process . . .'
by 'prohibiting parties from deliberately changing positions
according to the exigencies of the moment' 'Judicial Estoppel
'protects the essential integrity of the judicial process' . . .
[J]udicial estoppel prevents parties from 'playing fast and loose
with the courts.'

Id. at 749 & 50 (citations omitted).

This rule is just as applicable to quasi-judicial proceeding such as the current Oppositions. For instance, as noted by the United States Court of Appeals for the Federal Circuit, the Court which governs proceedings of the United States Patent and Trademark Office,

[T]he doctrine of judicial estoppel is an equitable concept that prevents a party who prevails on one ground in a lawsuit from then repudiating that ground in order to prevail in another lawsuit
The doctrine also applies to administrative proceedings in which a party obtains a favorable order by making an argument that it seeks to repudiate in a subsequent judicial proceeding. . . . The estoppel applies where intentional self-contradiction is being used as a means of obtaining an unfair advantage.

Lampi Corp. v. American Power Products, Inc., 228 F.3d 1365, 1377 (Fed.Cir. 2000) (citations omitted; emphasis added).

The pending Oppositions against the Alpha Phi Omega applications are the wrong "test case" for Omega SA. None of this firm's numerous fraternity or sorority clients with "Omega" in their name emphasize "Omega" over the other Greek Alphabet letters in their names and in resolution of the pending Oppositions against its applications, Alpha Phi Omega is willing to contractually commit it will never do so in the future.

Ms. Oren Gelber

May 5, 2011

Page 4

Perhaps if Alpha Phi Omega was emphasizing the word "Omega" or the Greek Alphabet letter Ω , as compared with the other Greek Alphabet letters in its name, it might be a good test case, but to assert that a fraternity or sorority name which merely contains "Omega," without emphasis of that letter will likely cause confusion brings to mind the apropos metaphor, "a bridge to far." It is a self-destructive, suicidal position to take.

Asserting a dilution argument against nearly 100 year old fraternities and sororities is just as ill-advised. Again, Alpha Phi Omega has been using its name and Greek letters on jewelry since 1925. To prevail on a dilution theory in this context, Omega SA would be required to prove that its marks were generally famous throughout the U.S. since prior to 1925, prior to when Alpha Phi Omega commenced its use. See 15 U.S.C. § 1125(c). Further, any effort to show fame in this context would make relevant the fact that *numerous* fraternities and sororities with "Omega" in their name actually predate the entry of the Omega SA products into the U.S.

If indeed Omega SA wants to assert that the fraternity and sorority market is pertinent for a dilution approach, it certainly risk an adjudication that in that context its marks *are not famous for dilution purposes*. Again, this is the wrong test case, Omega SA is heading towards "a bridge too far."

The realistic solution of the pending Oppositions against Alpha Phi Omega is, as we have already suggested, as follows:

1. In exchange for dismissal of the Oppositions, Alpha Phi Omega is willing to contractually commit that use of its name on merchandise will never emphasize the "Omega" or " Ω " portion in comparison with the "Alpha" and "Phi" components; and
2. As for the pending application to register the mark in class 014, Alpha Phi Omega is willing to restrict the recitation of goods to read, "jewelry for members of the Alpha Phi Omega Fraternity marketed through authorized vendors featuring fraternity and sorority affinity merchandise."

We have not sought to register ALPHA PHI OMEGA or the letters for timepieces of any sort and are not suggesting you agree we may do so. If ever we do, you would certainly retain the right to oppose such an application for registration.

We are satisfied this is the sensible solution of the Opposition to the pending Alpha Phi Omega applications. This is not a situation where we emphasize the Omega component of the fraternity name, nor is this a non-fraternity/non-sorority commercial endeavor engaged in under the Omega name. Those situations might be the appropriate test cases for your client. Conversely, our situation does not appear to be a good test case.

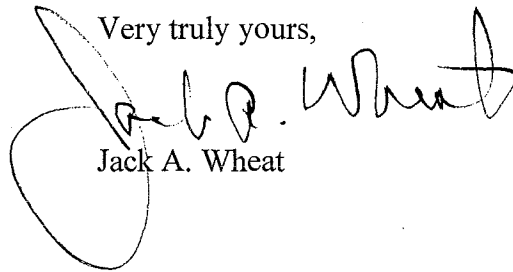
Ms. Oren Gelber

May 5, 2011

Page 5

Thus, we hope Omega SA will consider its real interests and be comfortable with our proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack A. Wheat". The signature is written in a cursive style with a large, looping initial "J".

Jack A. Wheat

AL169:00AL1:382646:1:LEXINGTON

Applicant's Exhibit 9

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

OMEGA S.A. (OMEGA AG)
(OMEGA LTD.),

Opposer,

v.

ALPHA OMEGA EPSILON, INC.,
Applicant.

Mark: AΩE
Opp. No.: 91214449 (Parent)
Serial No.: 85855823

OMEGA S.A. (OMEGA AG)
(OMEGA LTD.),

Opposer,

v.

ALPHA OMEGA EPSILON, INC.,
Applicant.

Mark: ALPHA OMEGA EPSILON
Opp. No.: 91214454 (Child)
Serial No.: 85855839

OMEGA S.A. (OMEGA AG)
(OMEGA LTD.),

Opposer,

v.

ALPHA OMEGA EPSILON, INC.,
Applicant.

Mark: ALPHA OMEGA EPSILON &
Design
Opp. No.: 91214452 (Child)
Serial No.: 85857062

OMEGA S.A. (OMEGA AG)
(OMEGA LTD.),

Opposer,

v.

ALPHA OMEGA EPSILON, INC.,
Applicant.

Mark: ALPHA OMEGA EPSILON
Opp. No.: 91214453 (Child)
Serial No.: 85857065

**OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

Opposer Omega SA (Omega AG) (Omega Ltd.) (hereafter, "Opposer"), hereby serves its responses and objections to Applicant's First Set of Interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Opposer objects to each and every Interrogatory in their entirety on the ground that Opposer is responding on the basis of its current knowledge and information. Opposer reserves the right to supplement each response to these interrogatories.
2. Opposer objects to each and every Interrogatory insofar as and to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity, and will not produce such information. Any inadvertent disclosure of such information shall not be a waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.
3. Opposer objects to each and every Interrogatory insofar as and to the extent it seeks divulgence of trade secrets, confidential or proprietary information of any third-party, such information will not be disclosed. To the extent each and every request seeks divulgence of such information of Opposer, such information will be disclosed subject to an appropriate protective order, signed by the parties and their counsel, and ordered by the Trademark Trial & Appeal Board.
4. Opposer objects to each and every Interrogatory to the extent it seeks disclosure of information relating to or revealing proprietary development and marketing activities for products not yet manufactured or not yet on sale or otherwise employed. The slight relevance, if

any, of such highly confidential trade secret information is vastly outweighed by the severe prejudice that would result to Opposer were it to be disclosed or available to competitors of Opposer. Opposer will not provide such information.

5. Opposer objects to each and every Interrogatory to the extent it calls for information neither relevant to the subject matter of this Action nor reasonably calculated to lead to the discovery of admissible evidence.

6. Opposer objects to Applicant's definitions in their entirety to the extent same seeks to impose obligations on Opposer beyond those permitted by the Federal Rules of Civil Procedure or the Local Rules applicable to this matter.

7. Opposer objects to each and every Interrogatory to the extent it calls for information that exceeds a reasonable durational scope.

8. Opposer objects to each and every Interrogatory to the extent it calls for information not yet available as these responses are made during the discovery process. Opposer reserves the right to supplement responses when the information becomes available.

9. Opposer objects to each and every Interrogatory to the extent it is overly broad, vague and ambiguous, unduly burdensome or not reasonably calculated to lead to the discovery of admissible evidence.

10. Opposer objects to each and every Interrogatory to the extent it is duplicative.

11. Opposer objects to each and every Interrogatory to the extent that it is not limited in geographic scope to the United States.

12. Opposer objects to the extent it is not required to respond to these interrogatories to the extent that Applicant has exceeded the permitted number of interrogatories, including subparts, as set forth in 37 C.F.R. § 2.120(d)(1), and TBMP §§ 405.03(a) and 405.03(e).

entireties, Opposer uses its Marks in conjunction with other words, phrases and designs (OMEGA SEAMASTER, OMEGA CONSTELLATION, Omega Globe Design, etc.), Applicant seeks to register its marks in Classes which are identical or which are highly related to those in Opposer's Registrations, and Applicant's application are unlimited as to target consumers or channels of trade, Opposer's registrations are unlimited as to target consumers and channels of trade.

INTERROGATORY NO. 11:

Describe in detail any demographic characteristics, including income, net worth, or extent of disposable income characteristics of the primary types of customers with whom Opposer does or intends to do business in the United States in connection with the marks upon which the Oppositions are based.

ANSWER:

Opposer incorporates by reference its General Objections, as if fully stated herein. Opposer objects to this Interrogatory as compound. Opposer objects to this Interrogatory as overly broad, ambiguous and vague. Opposer objects to this Interrogatory as unduly burdensome. Notwithstanding and without waiving the foregoing objections, Opposer responds that is customers are the public in general, that said customers' specific income, net worth or extent of disposable income falls within a wide range encompassing many income brackets.

INTERROGATORY NO. 12:

Identify all collegiate Greek letter fraternities and sororities with the word "Omega" in their name that Opposer is aware of, including any identified or otherwise noted in any survey,

Internet search, poll, investigation, market study, research, trademark search, conducted by or on behalf of Opposer.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Interrogatory as compound. Opposer further objects to this Interrogatory as it seeks information not relevant to the instant proceedings and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Opposer objects to this Interrogatory it requires Opposer to provide information that is within Applicant's knowledge, possession and/or control. Opposer objects that this Interrogatory seeks to impose an obligation on Opposer that is outside the scope of the Federal Rules of Civil Procedures. Opposer objects to this Interrogatory to the extent that Applicant is attempting to shift the burden of establishing its defenses to Opposer. Notwithstanding and without waiving the foregoing objections, Opposer responds that through its enforcement efforts it has become aware of the following: Alpha Chi Omega, Alpha Omega Epsilon, Alpha Phi Omega, Alpha Pi Omega, Alpha Tau Omega, Chi Omega, Delta Phi Omega, Gamma Phi Omega, Lambda Tau Omega, Omega Psi Phi, Omega Delta Phi, Omega Phi Beta, Omega Phi Chi, Sigma Omega Phi.

INTERROGATORY NO. 13:

Indicate the average or median, or approximate average or median price range of products sold under the marks upon which the Oppositions are based.

ANSWER:

Opposer hereby incorporates by reference all of its General Objections. Additionally, Opposer objects to this Interrogatory as compound. Opposer objects to this Interrogatory as